

# Union Calendar No. 471

105th Congress, 2d Session — — — — — House Report 105–829

## INVESTIGATION OF POLITICAL FUNDRAISING IMPROPRIETIES AND POSSIBLE VIOLATIONS OF LAW

### INTERIM REPORT

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### SIXTH REPORT

BY THE

### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

together with

### ADDITIONAL AND MINORITY VIEWS

Volume 4 of 4



NOVEMBER 5, 1998.—Committed to the Committee of the Whole House  
on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

51-332

WASHINGTON : 1998

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## LETTER OF TRANSMITTAL

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HOUSE OF REPRESENTATIVES,  
*Washington, DC, November 5, 1998.*

Hon. NEWT GINGRICH,  
*Speaker of the House of Representatives,*  
*Washington, DC.*

DEAR MR. SPEAKER: By direction of the Committee on Government Reform and Oversight, I submit herewith the committee's sixth report to the 105th Congress.

DAN BURTON,  
*Chairman.*



## CONTENTS

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	Page
Preface .....	1
Chapter I: Introduction .....	5
Chapter II: Unprecedented Obstacles to the Committee's Investigation .....	47
Chapter III: The Democrats' Failure to Return Illegal Campaign Contributions .....	149
Chapter IV: Unprecedented Infusion of Foreign Money Into the American Political System .....	1185
Part A: The Riady Family and John Huang: Access and Influence with the Clinton White House .....	1185
Part B: Yah Lin "Charlie" Trie and His Relationship with the Clinton Administration .....	1347
Part C: Johnny Chung: His Unusual Access to the White House and His Political Donations .....	1671
Part D: The Sioeng Family's Contributions and Foreign Ties .....	2131
Chapter V: The Failure of Government Agencies to Vigorously Pursue Campaign Violations .....	2933
Part A: Jorge Castro's Illegal Campaign Contributions, and Why They Were Never Prosecuted .....	2933
Part B: FEC Enforcement Practices and the Case Against Foreign National Thomas Kramer: Did Prominent DNC Fundraisers Receive Special Treatment? .....	2983
Chapter VI: The Hudson Casino Rejection .....	3111
Chapter VII: Procedural Background of the Campaign Finance Investigation ..	3863

### VIEWS

Additional views of Hon. Dan Burton .....	3881
Additional views of Hon. Pete Sessions .....	3920
Minority views of Hon. Henry A. Waxman, Hon. Tom Lantos, Hon. Robert E. Wise, Jr., Hon. Major R. Owens, Hon. Edolphus Towns, Hon. Paul E. Kanjorski, Hon. Gary A. Condit, Hon. Bernard Sanders, Hon. Carolyn B. Maloney, Hon. Eleanor Holmes Norton, Hon. Chaka Fattah, Hon. Elijah E. Cummings, Hon. Dennis J. Kucinich, Hon. Rod R. Blagojevich, Hon. Danny K. Davis, Hon. Thomas H. Allen, and Hon. Harold E. Ford, Jr .....	3923
Additional views of Hon. Thomas M. Barrett .....	4878

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NOVEMBER 5, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BURTON, from the Committee on Government Reform and Oversight, submitted the following

### SIXTH REPORT

together with

#### ADDITIONAL AND MINORITY VIEWS

On October 8, 1998, the Committee on Government Reform and Oversight approved and adopted a report entitled, "Investigation of Political Fundraising Improprieties and Possible Violations of Law." The chairman was directed to transmit a copy to the Speaker of the House.

MINORITY VIEWS OF HON. HENRY A. WAXMAN, HON. TOM LANTOS, HON. ROBERT E. WISE, JR., HON. MAJOR R. OWENS, HON. EDOLPHUS TOWNS, HON. PAUL E. KANJORSKI, HON. GARY A. CONDIT, HON. BERNARD SANDERS, HON. CAROLYN B. MALONEY, HON. ELEANOR HOLMES NORTON, HON. CHAKA FATTAH, HON. ELIJAH E. CUMMINGS, HON. DENNIS J. KUCINICH, HON. ROD R. BLAGOJEVICH, HON. DANNY K. DAVIS, HON. THOMAS H. ALLEN, HON. HAROLD E. FORD, JR.

#### CONTENTS

##### INTRODUCTION

- I. The Investigation was Characterized by Partisanship, Mishaps, Abuses of Power, and Waste
  - A. The Investigation Was Partisan
    1. Chairman Burton Promised to Conduct a Fair Investigation
    2. Chairman Burton Later Admitted that He Is "After" the President
    3. Over Ninety-Nine Percent of Subpoenas and Other Information Requests Targeted Democrats



4. Republican Campaign Finance Abuses Have Been Routinely Ignored
  - a. Republican Favors for the Tobacco Industry
  - b. Republican Conduit Contributions
  - c. Republican Fundraising on Federal Property
  - d. Illegal Foreign Contributions to Republicans
  - e. The Activities of Triad Management Services
5. The Majority Doctored Evidence and Suppressed Testimony to Make Democrats Appear Culpable
  - a. The Webster Hubbell Tapes
  - b. Other Examples of the Selective Use of Evidence
- B. The Investigation Was Plagued by Mishaps
  1. Subpoenas Issued to the Wrong Individuals
  2. The Committee's "Stake Out" of Felix Ma
  3. The Committee's Release of the President's Private Fax Number
  4. The Committee's Actions in Taiwan
  5. Insensitivity to the Concerns of Asian-Americans
  6. Republican Acknowledgment of the Committee's Incompetence
- C. The Committee Abused Its Powers
  1. The Committee Abused the Subpoena Power
  2. The Committee Abused the Deposition Power
  3. The Committee Abused the Immunity Power
  4. The Committee Abused the Contempt Power
  5. The Committee Abused the Power to Release Documents
  6. The Committee Leaked Confidential Information
  7. The Committee Excluded the Minority from Witness Interviews
  8. The Committee Violated its Own Budget Rules
- D. The Committee Wasted Taxpayer Dollars
  1. The Committee Has the Largest Budget of Any Committee in the History of Congress
  2. The Committee Spent Over \$7.4 Million on the Campaign Finance Investigation
  3. The Investigation Is the Most Expensive and Least Productive Congressional Investigation in History
  4. The Investigation Squandered Taxpayer Dollars
  5. The Investigation Duplicated the Senate Investigation
  6. The Investigation Duplicated Other House Investigations
  7. The Investigation Imposed Large Costs on Federal Agencies
  8. The Total Costs to the Taxpayer from Congressional Campaign Finance Investigations Exceed \$23 Million
  9. The Investigation Imposed Large Costs on the DNC and Other Private Parties
- E. The Investigation Was Widely Criticized
  1. The Views of Editorial Boards
  2. The Views of Columnists and Commentators
- II. The Majority Repeatedly Made Sensational Allegations That Were False or Unsubstantiated
  - A. John Huang Did Not "Launder Money" through David Wang
  - B. The White House Videotapes Were Not "Cut Off Intentionally" or "Altered"
  - C. The Hudson Casino Decision Was Not a "Political Payoff"
  - D. There Is No Evidence That the President Created a National Monument in Utah "in Exchange for Money from Indonesia's Lippo Group"
  - E. The Hubbell Tapes Did Not Show a "Payoff" to Webster Hubbell
  - F. The Immunized Witnesses Did Not have "Direct Knowledge About How the Chinese Government Made Illegal Campaign Contributions"
  - G. President Clinton Did Not "Endorse" the Candidacy of a Foreign Leader in Exchange for Campaign Contributions
  - H. The Committee Failed to Substantiate the Existence of a "Massive Scheme" to Funnel Foreign Contributions into the U.S.
  - I. Other Unsubstantiated Republican Allegations
- III. The Majority Report Contains Little New Information
  - A. Introduction
  - B. Evaluation of Chapter II of the Majority Report
  - C. Evaluation of Chapter III of the Majority Report
  - D. Evaluation of Chapter IV of the Majority Report
    1. Allegations Relating to the Riady Family and John Huang
    2. Allegations Relating to Charlie Trie
    3. Allegations Relating to Johnny Chung
    4. Allegations Relating to Ted Sioeng

- E. Evaluation of Chapter V of the Majority Report
  - 1. Allegations Relating to Jorge Castro Barredo and Charles Intriago
  - 2. Allegations Relating to Thomas Kramer and Howard Glicker
- F. Evaluation of Chapter VI of the Majority Report
- IV. A Review of Questionable Republican Campaign Finance Practices
  - A. Conduit Contribution Schemes and Republican Campaigns
    - 1. The Prohibition on Conduit Contributions
    - 2. Conduit Contribution Scheme Involving Majority Whip DeLay, Peter Cloeren, and Brian Babin
    - 3. Conduit Contribution Scheme Involving Thomas Stewart
    - 4. Conduit Contribution Scheme Involving Simon Fireman and Aqua-Leisure Industries, Inc
    - 5. Conduit Contribution Scheme Involving Empire Sanitary Landfill
    - 6. Conduit Contribution Scheme Involving DeLuca Liquor & Wine Ltd
  - B. Republicans Have Received Foreign Campaign Contributions
    - 1. Foreign Contributions Solicited by Rep. Jay Kim
    - 2. Foreign Contributions Solicited by Haley Barbour
    - 3. Additional Foreign Contributions Solicited by the NPF
    - 4. Contributions to Republicans from Ted Sioeng
      - a. Ted Sioeng's Relationship with Matt Fong
      - b. Ted Sioeng's Relationship with Speaker Gingrich
      - c. Unanswered Questions Regarding Mr. Sioeng's Relationship with Matt Fong and Speaker Gingrich
    - 5. Other Foreign Contributions to Republicans
    - 6. Contributions to Republicans from U.S. Subsidiaries of Foreign Companies
  - C. The Relationship between Access to Republican Leaders and Campaign Contributions
    - 1. The Sale of Access by Republican Congressional Leaders
    - 2. The Sale of Access by Prior Republican Administrations
    - 3. Contributions That May Have Influenced Policy Decisions
  - D. Triad Management Services Engaged in Questionable Practices to Support Republican Candidates
    - 1. Background on Triad
    - 2. Triad's Alleged Illegal Corporate Contributions
    - 3. Triad's Alleged Schemes to Evade Contribution Limits
    - 4. Triad's Possible Improper Coordination on Political Advertisements
- V. The Republican Congress has Blocked Campaign Finance Reform and Played Politics with the Federal Election Commission
  - A. The Republican Leadership Defeated Campaign Finance Reform Legislation
    - 1. The Campaign Finance Reform Legislation
    - 2. Republican Efforts to Thwart Campaign Finance Reform
    - 3. How Committee Members Voted
  - B. The Republican Leadership Sought to Hamstring the FEC
    - 1. Efforts to Remove the FEC's General Counsel
    - 2. Efforts to Defund the FEC

## APPENDIX

- Exhibit 1: Correspondence
- Exhibit 2: Minority Staff Reports
- Exhibit 3: Editorials
- Exhibit 4: Columns and Opinions
- Exhibit 5: News Articles
- Exhibit 6: Cloeren Affidavit
- Exhibit 7: Documents Relating to Alleged Obstacles to the Committee's Investigation
- Exhibit 8: Documents Relating to Contributions to the Democratic Party
- Exhibit 9: Documents Relating to Charlie Trie
- Exhibit 10: Documents Relating to Johnny Chung
- Exhibit 11: Documents Relating to Ted Sioeng
- Exhibit 12: Documents Relating to the National Policy Forum
- Exhibit 13: Documents Relating to the Republican National Committee



## INTRODUCTION

Last year, House Speaker Newt Gingrich said that the Committee's campaign finance investigation "may be the most historic investigation in the history of the United States."<sup>1</sup> The investigation may be historic, but for all the wrong reasons.

As described in detail in Part I of these minority views, the Committee's campaign finance investigation has been the most partisan, unfair, and abusive investigation since the McCarthy hearings in the 1950s. It has also been the most expensive congressional investigation in history.

Chairman Burton alleged at the outset of the investigation that "this thing could end up being bigger than Watergate ever was" and that he would prove the existence of a "massive" Chinese conspiracy to violate our campaign finance laws. But as described in Part II, Chairman Burton never substantiated these and many other well-publicized allegations. Unfortunately, the pattern of "accuse first, investigate later" became a hallmark of the investigation.

Part III of these views responds to the major findings in the majority report. The Committee spent over \$7 million on the campaign finance investigation, issued 1,285 subpoenas and information requests, took 161 depositions, and received 1.5 million pages of documents, but found virtually no new information.

The majority's investigation ignored Republican campaign finance abuses, targeting alleged Democratic violations in over 99% of the subpoenas and document requests issued by Chairman Burton. In fact, campaign finance abuses are bipartisan. As documented in Part IV, some of the most serious allegations of campaign finance abuses involve Republicans, such as the substantial and credible evidence that Majority Whip Tom DeLay participated in an illegal conduit contribution scheme.

The ultimate irony of the investigation may be that at the same time that the Committee spent millions of dollars investigating alleged Democratic campaign finance abuses, the majority of Committee Republicans supported the efforts of the Republican leadership to defeat campaign finance reform legislation and to hamstring the federal agency that is charged with enforcing campaign finance laws. Part V describes these efforts.

### I. THE INVESTIGATION WAS CHARACTERIZED BY PARTISANSHIP, MISHAPS, ABUSES OF POWER, AND WASTE

The Government Reform and Oversight Committee's campaign finance investigation was the most partisan, inept, abusive, and wasteful congressional investigation since the McCarthy hearings in the 1950s. According to Norman Ornstein, a congressional expert

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<sup>1</sup> Speaker Ties Cash Scandal to Clinton, Gore, Washington Times (June 9, 1997).

at the conservative American Enterprise Institute, “the Burton investigation is going to be remembered as a case study in how not to do a congressional investigation and as a prime example of investigation as farce.”<sup>2</sup> According to the New York Times, the Committee’s efforts are a “House investigation travesty” and a “parody of a reputable investigation.”<sup>3</sup> The Washington Post called the investigation “its own cartoon, a joke and a deserved embarrassment.”<sup>4</sup>

This section of the minority report describes the systemic problems that characterized the investigation since its beginning. It reviews the partisan motives that fueled the investigation, the majority’s mishaps and mistakes, the persistent abuses of power that plagued the investigation, and the Committee’s wasteful use of tax dollars.

#### A. THE INVESTIGATION WAS PARTISAN

##### 1. *Chairman Burton Promised to Conduct a Fair Investigation*

Even before Chairman Burton officially began his campaign finance investigation, serious questions were raised by others in the Republican party as to whether the probe would be partisan and unfair.<sup>5</sup> Aware of these concerns, Chairman Burton pledged to conduct a fair and bipartisan investigation. Chairman Burton told the Capitol Hill newspaper Roll Call, “As chairman I have to be as non-partisan as possible. I have to be as fair as humanly possible.”<sup>6</sup> He was later quoted in the New York Daily News as saying, “I look at myself as in a quasi-judicial position, and I think it’s important that I appear as fair as possible.”<sup>7</sup>

In an attempt to appear fair, Chairman Burton promised to look into allegations of both Republican and Democratic abuses. At the April 10, 1997, Committee meeting, Chairman Burton stated that “substantial evidence of improprieties will be pursued wherever it leads. . . . [T]he Committee’s current protocol does not . . . limit the Committee from taking investigative leads whenever they go wherever they go within the Committee’s jurisdiction.”<sup>8</sup> Similarly, as the first hearings approached, Chairman Burton said, “Well, I’m a partisan Republican, but I will tell you, we’re going to be very fair and judicial in our approach to handling this whole scandal. And where Republicans have made mistakes and broken the law, we’re going to try to get at that as well.”<sup>9</sup> In his opening statement at the first hearing, Chairman Burton added, “the committee also is examining matters relating to the Republican National Commit-

<sup>2</sup>House Probe of Campaign Fund-Raising Uncovers Little, Los Angeles Times (May 2, 1998). This article and other news stories related to the campaign finance investigation are attached to this report as Exhibit 5.

<sup>3</sup>A House Investigation Travesty, New York Times (Apr. 12, 1997).

<sup>4</sup>Mr. Burton Should Step Aside, Washington Post (Mar. 20, 1997).

<sup>5</sup>See, e.g., The Wrong Man for a Sensitive Job, New York Times (Nov. 20, 1996).

<sup>6</sup>Burton Promises to Put Partisanship Aside in Role as Oversight Chairman, Roll Call (Nov. 14, 1996).

<sup>7</sup>Even GOP Wary of Burton, New York Daily News (June 8, 1997).

<sup>8</sup>Chairman Burton, House Committee on Government Reform and Oversight, Business Meeting (Apr. 10, 1997).

<sup>9</sup>NBC’s Meet the Press (Sept. 14, 1997).

tee and will continue to follow the facts wherever they lead us, in either party.”<sup>10</sup>

A number of other Republican Committee members also assured the public that the investigation would look into all allegations of campaign finance abuses, including possible abuses by members of Congress. Rep. Christopher Shays noted, “our Chairman said that we have the right to look at wrongdoing wherever we find it. . . . It is so clear that even an idiot would understand we have jurisdiction over the executive, legislative, and judicial branch. . . . This Committee has 360 degrees [of] jurisdiction.”<sup>11</sup> Rep. Connie Morella added, “the wording in the protocol that we have before us is the kind of scope that allows us . . . to go beyond the executive branch and beyond government agencies. So if it is congressional, so be it, it is congressional.”<sup>12</sup>

### *2. Chairman Burton Later Admitted That He Is “After” the President*

Despite the public pronouncements of Chairman Burton and other Republican Committee members that the investigation would be fair and nonpartisan, the Chairman eventually admitted that his goal was to remove the President and damage the Democratic party. In an April 1998 interview discussing President Clinton with the Indianapolis Star newspaper, Chairman Burton said, “If I could prove 10 percent of what I believe happened, he’d be gone. This guy’s a scumbag. That’s why I’m after him.”<sup>13</sup> After the interview, the paper reported that Chairman Burton “is a man on a mission: to link the president of the United States to an indictable offense.”<sup>14</sup>

Chairman Burton reportedly expressed similar views at a 1997 luncheon hosted by GOPAC, the Republican political action committee formerly headed by House Speaker Newt Gingrich. According to a report in Esquire magazine:

Brashly acknowledging his own partisan motives during this closed meeting of political allies, Burton tells the GOPAC crowd that the current fundraising scandal will turn out to be the Democrats’ Watergate, resulting in a net gain of “twenty to twenty-four seats” for the GOP in next year’s congressional elections. “It’s over!” he hollers.<sup>15</sup>

### *3. Over Ninety-Nine Percent of Subpoenas and Other Information Requests Targeted Democrats*

The number of subpoenas and information requests issued to investigate allegations of Democratic fundraising abuses and the number of subpoenas and information requests issued to investigate allegations of Republican fundraising abuses are not a matter of subjective dispute. These statistics show that Chairman Bur-

<sup>10</sup> House Committee on Government Reform and Oversight, Hearing on Campaign Finance Improprieties and Possible Violations of Law, 105th Cong., 1st Sess., 7 (Oct. 8, 1997).

<sup>11</sup> Rep. Shays, House Committee on Government Reform and Oversight, Business Meeting (Apr. 10, 1997).

<sup>12</sup> Rep. Morella, House Committee on Government Reform and Oversight, Business Meeting (Apr. 10, 1997).

<sup>13</sup> Burton’s Pursuit of President, Indianapolis Star (Apr. 16, 1998).

<sup>14</sup> Id.

<sup>15</sup> All the President’s Menaces, Esquire (August 1997).

ton used his unilateral subpoena power to target Democrats almost exclusively. Out of the 1,285 information requests, depositions, or interviews issued or taken by Chairman Burton through September 30, 1998, 1,272—over 99%—targeted allegations of Democratic fundraising abuses. This statistic includes 674 out of 684 subpoenas for documents, 159 out of 161 depositions, all 18 formal interviews, 294 out of 295 document requests and interrogatories, and all 118 outstanding deposition requests and all 9 outstanding interview requests.

Objective sources recognized the unfairness of such a focus. Congressional Quarterly (CQ) observed, “Unlike [Senator] Thompson, who sought a degree of evenhandedness, the more partisan House is looking almost exclusively at Democratic abuses, avoiding inquiries into questionable practices employed by Republicans to raise record-shattering amounts of money in 1996.”<sup>16</sup> According to CQ, “[e]ven some Republicans concede that the probe’s credibility is on the line because of its one-party focus.”<sup>17</sup>

Although the statistics from the Committee’s investigation might suggest that wrongdoing has been committed by only the Democratic party, statistics from the nonpartisan Federal Election Commission paint the opposite picture. At the March 31, 1998, Committee hearing, both FEC Vice Chairman Scott E. Thomas and General Counsel Lawrence Noble testified that FEC investigations of campaign finance violations are almost equally divided between Republicans and Democrats:

Mr. WAXMAN. Based on your experience at the Federal Election Commission, are Democrats responsible for 99 percent of the campaign finance abuses?

Mr. NOBLE. Not based on my experience. I think it’s spread pretty evenly.

Mr. WAXMAN. It’s what?

Mr. NOBLE. It’s spread pretty evenly, I think.

Mr. WAXMAN. Spread pretty evenly. Can you estimate what percentage of the violations you investigate are Democratic, and what percentage are Republican?

Mr. NOBLE. I don’t have that. Our office does not keep figures in that regard.

Mr. THOMAS. Mr. Chairman, I might be able to help you there. I have been sensitive to this kind of criticism since a recent Wall Street Journal article came out a while back, wherein it suggested that someone was under the impression 9 out of 10 of our cases were against Republicans. And I had my assistant go back and look at what the status was at the beginning of 1995 and again at the beginning of 1998. Of the active cases that we had going back in the beginning of 1995, as I strike the percentages of the cases involving Republicans versus Democrats, 53 percent were involving Democrats; the remaining percentage, out

<sup>16</sup>House GOP Casts Wide Net in Renewed Scandal Hunt, Congressional Quarterly (Jan. 17, 1998).

<sup>17</sup>Burton Panel Faces Tough Fight Over Scope, Procedures, Congressional Quarterly (Apr. 5, 1997).

of 100 percent, would have involved Republicans, roughly the same percentage in the beginning of 1998.<sup>18</sup>

It is wrong to use taxpayer funds to engage in partisan political activities. Yet the one-sided focus of the investigation shows that this is exactly what transpired. The Committee's extensive powers and resources were used virtually exclusively to target Democrats for partisan advantage. As the statistics and a review of the record make clear, substantial evidence of Republican abuses was simply ignored.

#### *4. Republican Campaign Finance Abuses Have Been Routinely Ignored*

Although Chairman Burton promised that "substantial evidence of improprieties will be pursued wherever it leads," the Chairman routinely ignored substantial evidence of Republican campaign finance improprieties. In fact, Chairman Burton ignored Republican abuses even while investigating parallel allegations against Democrats. Examples of these Republican campaign finance abuses are summarized below and are discussed in more detail in part IV.

##### *a. Republican Favors for the Tobacco Industry*

Chairman Burton held four days of hearings in January 1998 investigating the alleged influence campaign contributions to the Democratic Party had on an Interior Department decision to deny an Indian casino application in Hudson, Wisconsin.<sup>19</sup> Foreign campaign contributions were not at issue in this inquiry. Specifically, Chairman Burton investigated whether a former Democratic National Committee treasurer used his influence to advance the decision, and whether then-DNC chairman Don Fowler called the Interior Department on behalf of DNC contributors who opposed the casino. Yet despite numerous requests from the minority, Chairman Burton refused to investigate similar allegations involving Republicans.

For example, it was widely reported that the Republican leadership included a \$50 billion tax credit for the tobacco industry in the 1997 balanced budget legislation after the Republican National Committee received \$8.8 million in contributions from the industry. The Washington Post reported that during the budget negotiations, House Speaker Gingrich and Senate Majority Leader Trent Lott "insisted on a provision that would give tobacco companies a \$50 billion credit against the sum they had pledged to settle anti-tobacco litigation."<sup>20</sup> According to the Post, Republican leaders "were among Congress's top recipients of tobacco industry funds," and the tax credit was "pushed" by former RNC Chairman Haley Barbour, who became a tobacco industry lobbyist.<sup>21</sup> Nonetheless, Chairman Burton denied written requests made by the minority on June 10,

<sup>18</sup>House Committee on Government Reform and Oversight, Hearing on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess., 108-109 (Mar. 31, 1998).

<sup>19</sup>House Committee on Government Reform and Oversight, Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Application, 105th Cong., 2d Sess., v. 1 (Jan. 21, 22, 28, 29, 1998).

<sup>20</sup>How a \$50 Billion "Orphan" Was Adopted, Washington Post (Aug. 17, 1997).

<sup>21</sup>Id.



1997, August 29, 1997, and January 13, 1998,<sup>22</sup> as well as a request at the January 21, 1998, Committee hearing,<sup>23</sup> to investigate evidence of possible Republican favors in return for tobacco industry contributions.

At the January 21, 1998, hearing, Chairman Burton used a chart to explain why the Committee was investigating the Hudson casino matter. Chairman Burton's chart read as follows:

#### HUDSON FACTS

1. Law requires consultation with tribes
2. Lobbyists were hired to stop progress
3. Tribal meetings with big contributors: \$400,000 (opponents) vs. \$6,000 (proponents)
4. \$350,000 of contributions to Democrats
5. Duffy and Collier leave Interior to work for Shakopees
6. Collier carried \$50,000 check to DNC on behalf of Shakopees<sup>24</sup>

At the same hearing, Rep. Waxman used a similar chart to explain why the Republican ties to the tobacco industry should be investigated. Rep. Waxman's chart read as follows:

#### TOBACCO FACTS

1. Tobacco industry hires former RNC Chairman Haley Barbour as their lobbyist.
2. Tobacco industry gives \$8.8 million to Republican party since 1995; the three biggest contributors to the Republican party were all tobacco companies.
3. Speaker Gingrich and Senate Majority Leader Lott insert a secret provision into the budget bill that gives the tobacco industry a \$50 billion tax break.
4. With no discussion on the merits, the largest special interest tax break in history is passed.<sup>25</sup>

As Rep. Waxman noted in his opening statement at the January 21 hearing, "The \$50 billion giveaway to the tobacco industry is indistinguishable from today's hearing. In fact, the only difference in the matter is the industry's contributions and the benefit they received dwarf today's subject."<sup>26</sup> Of course, a second distinction is that the Hudson casino matter involved contributions to Democrats while the tobacco industry tax break involved contributions to Republicans.

<sup>22</sup> Letters from Rep. Waxman to Chairman Burton (June 10, 1997; Aug. 29, 1997; and Jan. 13, 1998). A complete set of correspondence between Rep. Waxman and Chairman Burton (comprising 143 letters from Rep. Waxman to Chairman Burton and 44 letters from Chairman Burton to Rep. Waxman), and other correspondence related to the investigation, is attached to this report as Exhibit 1.

<sup>23</sup> House Committee on Government Reform and Oversight, Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Application, 105th Cong., 2d Sess., 14 (Jan. 21, 22, 28, 29, 1998).

<sup>24</sup> Id. at 105.

<sup>25</sup> Id. at 167.

<sup>26</sup> Id. at 13-14.

This was not the only questionable activity involving the Republican leadership and the tobacco industry that the Committee failed to investigate. On July 20, 1998, the minority staff released a report entitled, "Air Tobacco: Campaign Travel on Tobacco Industry Jets,"<sup>27</sup> which analyzed the tobacco industry's practice of providing its corporate aircraft to congressional leaders and political parties for campaign activities. The report found that (1) the tobacco industry provides more subsidized campaign travel to congressional leaders and political parties than any other corporate special interest and (2) the beneficiary of subsidized campaign travel from the tobacco industry is the Republican congressional leadership and Republican party organizations. In total, the report found that the Republican leadership and Republican organizations reported 84 separate disbursements totaling as much as \$244,000 to the tobacco industry for campaign travel from January 1, 1997, through May 31, 1998. The tobacco industry was reimbursed only for the cost of first class travel—far below the actual cost of flying on corporate jets—resulting in a subsidy to the recipients 15 to 45 times greater than the amount of the disbursements. Reports by Democratic campaign organizations, meanwhile, indicated no disbursements to the tobacco industry for travel.

As reported in the *Washington Post*, "The nation's leading tobacco companies made their corporate jets available to Republican lawmakers and GOP committees for dozens of flights in the past year. . . . Much of the travel occurred as the tobacco companies were trying at first to get Congress to approve legislation to give them some protection from mounting lawsuits, and later as the companies successfully lobbied Republican senators to kill that legislation after the lawsuit protection was removed."<sup>28</sup> Rep. John Linder, chairman of the National Republican Congressional Committee, responded that he sees "nothing wrong" with the travel. It is "another big perk we get," he said, "I don't apologize for it."<sup>29</sup>

#### *b. Republican Conduit Contributions*

Chairman Burton held a hearing to investigate allegations that the DNC received illegal conduit contributions made by Charlie Trie through Manlin Fong, Joseph Landon, and David Wang.<sup>30</sup> He also held separate hearings on alleged conduit contributions to Democrats involving German businessman Thomas Kramer<sup>31</sup> and a Venezuelan banking family.<sup>32</sup> Yet Chairman Burton refused to investigate evidence that Republicans received similar conduit contributions.<sup>33</sup>

For example, on August 6, 1998, the minority members of the Committee (with the exception of Rep. Turner who recused himself

<sup>27</sup> House Committee on Government Reform and Oversight, Minority Staff Report, *Air Tobacco: Campaign Travel on Tobacco Industry Jets* (July 20, 1998). This staff report and other campaign finance reports issued by the minority are attached to this report as Exhibit 2.

<sup>28</sup> *Tobacco's Influence Takes Flight in GOP*, *Washington Post* (July 20, 1998).

<sup>29</sup> *Id.*

<sup>30</sup> House Committee on Government Reform and Oversight, Hearing on Conduit Payments to the Democratic National Committee, 105th Cong., 1st Sess. (Oct. 9, 1997).

<sup>31</sup> House Committee on Government Reform and Oversight, Hearing on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess., 108–109 (Mar. 31, 1998).

<sup>32</sup> House Committee on Government Reform and Oversight, Hearing on Venezuelan Money and the Presidential Election, 105 Cong., 2d Sess. (Apr. 30, 1998).

<sup>33</sup> See, e.g., letters from Rep. Waxman to Chairman Burton (Apr. 29, 1997 and May 8, 1997).

from the issue) requested that Chairman Burton schedule hearings to investigate an allegation that the third-ranking Republican in the House, Majority Whip Tom DeLay, orchestrated conduit contributions to the campaign of Brian Babin, a Republican congressional candidate in Texas in 1996.<sup>34</sup>

According to an affidavit from Republican contributor Peter F. Cloeren, Jr., Rep. DeLay advised Mr. Cloeren on ways to funnel illegal campaign contributions to the Babin campaign.<sup>35</sup> Although Mr. Cloeren already contributed the maximum amount allowed by law, Mr. Cloeren stated that Rep. DeLay advised him that "additional vehicles" could be used to send money to Mr. Babin, including Triad Management Services and the campaigns of other Republican candidates. Mr. Cloeren also admitted that he contributed \$37,000 to Mr. Babin through employees, who contributed \$1,000 each with the understanding that Mr. Cloeren would reimburse them.

These allegations clearly warrant further investigation. Not only do they involve the House Majority Whip, a high-ranking elected official, but they offer an unusual potential for illuminating hearings because the source of the conduit contributions appears to be willing to talk about the contributions voluntarily. Nevertheless, Chairman Burton has not even responded to the minority's request for an investigation.

The Cloeren contributions were not the only conduit contributions to Republican candidates. During the October 9, 1997, Committee hearing, Rep. Waxman noted, "Conduit payments are, of course, illegal; unfortunately, they've also become much too common. . . . The Federal Election Commission is currently investigating 27 conduit payments involving 214 individuals."<sup>36</sup> Yet despite minority requests, Chairman Burton refused to investigate any conduit contributions involving Republicans, including: Simon Fireman, the former vice chairman of the Dole campaign's finance committee, who pled guilty to making more than \$100,000 in illegal conduit contributions;<sup>37</sup> Nevada-based Deluca Liquor & Wine, Ltd. and its vice president, Ray Norvell, who pleaded guilty to making \$10,000 in illegal conduit contributions to the Dole campaign;<sup>38</sup> and Pennsylvania-based Empire Sanitary Landfill, which pleaded guilty to funneling \$129,000 in corporate funds to campaigns through its employees, including \$80,000 to the Dole campaign.<sup>39</sup>

### *c. Republican Fundraising on Federal Property*

Chairman Burton extensively investigated allegations that President Clinton and Vice President Gore used the White House and other federal property, such as Air Force I, to solicit campaign contributions.<sup>40</sup> Yet at the same time he was investigating fundraising

<sup>34</sup> Letter from Reps. Waxman, Lantos, et al. to Chairman Burton (Aug. 6, 1998).

<sup>35</sup> Affidavit of Peter F. Cloeren (Aug. 6, 1998). This affidavit is attached to this report as Exhibit 6.

<sup>36</sup> House Committee on Government Reform and Oversight, Hearing on Conduit Payments to the Democratic National Committee, 105th Cong., 1st Sess. (Oct. 9, 1997).

<sup>37</sup> See Ex-Dole Finance Official Is Fined for Illegal Gifts, Washington Post (Oct. 24, 1996).

<sup>38</sup> See LV Executive Admits Dole Contribution, Las Vegas Review-Journal (June 6, 1998).

<sup>39</sup> See Firm to Pay \$8 Million Fine for Illegal Campaign Gifts, Washington Post (Oct. 9, 1997).

<sup>40</sup> See, e.g., Subpoena from House Committee on Government Reform and Oversight to the Executive Office of the President (Mar. 4, 1997) (The subpoena included 45 separate requests for "all records relating to" over 200 different entities, persons, and executive branch functions, in-

by Democrats on federal property, Chairman Burton refused requests from the minority to investigate evidence that Republicans have used federal property for fundraising.

For example, although White House videotapes clearly show that events were held for major Republican contributors in the Reagan White House,<sup>41</sup> Chairman Burton denied minority requests to investigate these events.<sup>42</sup>

Additionally, Republicans in Congress—led by Speaker Gingrich—have used federal property for fundraising purposes. Invitations to the 1995 Republican House-Senate dinner put a price tag on access to the Republican leadership in federal buildings: \$15,000 contributors were invited to a “Senate Majority Leader’s Breakfast” hosted by Senator Bob Dole in the “Senate Caucus Room,” and \$45,000 contributors were invited to a luncheon hosted by Speaker Gingrich in the “Great Hall of the Library of Congress.”<sup>43</sup> Nevertheless, despite the similarities between the Republican practices in Congress and the Democratic practices in the White House, Chairman Burton refused to respond to minority requests to investigate the congressional practices.<sup>44</sup>

#### *d. Illegal Foreign Contributions to Republicans*

One major focus of Chairman Burton’s investigation was to determine whether there was a concerted effort by the White House or the DNC to solicit illegal foreign campaign contributions. Yet Chairman Burton was reluctant to investigate significant evidence that Speaker Gingrich and other Republican leaders may have solicited illegal foreign contributions.

One of the primary figures investigated by Chairman Burton was Ted Sioeng, who was described by the Chairman as “an Indonesian-born businessman who travels on a Belize passport, suspected by committee members of working along with his family, on behalf of the Chinese Government interests in the United States.”<sup>45</sup> According to Chairman Burton, Mr. Sioeng “has a major stake” in Red Pagoda cigarettes, which “is owned by the Chinese Government, and it is a convenient way to funnel money into campaigns in the United States by Ted Sioeng.”<sup>46</sup>

During the course of the Committee’s investigation, evidence emerged that linked Mr. Sioeng to Speaker Gingrich. At his deposition, for example, California State Treasurer Matt Fong, a Republican, testified that he arranged for Mr. Sioeng to meet privately with Speaker Gingrich in the Speaker’s office.<sup>47</sup> According to press accounts, days after this meeting Mr. Sioeng contributed \$50,000 through his daughter’s company, Panda Industries, to the National

cluding all official delegation trips abroad, fundraising events and activities, and guest lists for various official and party activities).

<sup>41</sup> House Committee on Government Reform and Oversight, Hearings on White House Compliance With Committee Subpoenas, 105th Cong., 1st Sess., 163 (Nov. 6, 7, 1997).

<sup>42</sup> See e.g., Letter from Rep. Waxman to Chairman Burton (June 10, 1997).

<sup>43</sup> Waxman Cites Republicans for “Selling Access,” Washington Post (Mar. 11, 1997). See also Letter from Rep. Waxman to Chairman Burton (Mar. 13, 1997).

<sup>44</sup> See Letter from Rep. Waxman to Chairman Burton (June 10, 1997).

<sup>45</sup> Congressional Record, H4545 (June 11, 1998).

<sup>46</sup> Congressional Record, H3058 (May 12, 1998).

<sup>47</sup> Deposition of Matthew K. Fong, House Committee on Government Reform and Oversight, 66–68 (Mar. 2, 1998). All depositions referenced in this section, unless otherwise noted, were taken by the House Committee on Government Reform and Oversight.

Policy Forum, a subsidiary of the RNC,<sup>48</sup> and “sat in a place of honor next to Gingrich . . . [at a] reception for Gingrich at a Beverly Hills hotel.”<sup>49</sup>

Rep. Waxman repeatedly wrote Chairman Burton to request further investigation of the ties between Mr. Sioeng and Speaker Gingrich.<sup>50</sup> On June 11, 1998, for example, Rep. Waxman wrote Chairman Burton to request that Chairman Burton fulfill the commitment he made at the April 30, 1998, Committee meeting when he pledged that “our entire investigation involving Ted Sioeng and the foreign money he gave the campaigns is exploring both Democrat and Republican contributions.”<sup>51</sup> Chairman Burton, however, never responded to these requests.

Chairman Burton also refused to investigate properly evidence that former RNC Chairman Haley Barbour used the National Policy Forum to solicit foreign contributions from Hong Kong businessman Ambrous Young. According to news reports and the Senate Governmental Affairs Committee investigation, the RNC received millions of dollars in last-minute campaign funds in 1994 after Mr. Barbour secured \$2.2 million in loan guarantees from Mr. Young.<sup>52</sup> Although Chairman Burton at first agreed to minority requests to investigate the NPF allegations (and even sent subpoenas to the NPF, Ambrous Young, and others involved in the transaction),<sup>53</sup> Chairman Burton dropped the investigation as soon as it became clear that the continued investigation of this issue would require Chairman Burton to issue a subpoena to Mr. Barbour. In fact, Chairman Burton never even responded to Rep. Waxman’s June 17, 1997, letter requesting that Chairman Burton issue a subpoena to Mr. Barbour.<sup>54</sup>

There also were a number of allegations involving Chairman Burton’s relationships with foreign governments and entities that were not investigated by the Committee. These were described in news articles in the Washington Post, New York Times, and many other papers.<sup>55</sup>

#### *e. The Activities of Triad Management Services*

Even when Chairman Burton publicly promised in Committee meetings that the Committee would investigate allegations of Republican abuses, he later refused to fulfill these promises. One

<sup>48</sup> State Treasurer Linked to Asian Funds, Los Angeles Times (Feb. 25, 1998).

<sup>49</sup> Id.

<sup>50</sup> See, e.g., Letters from Rep. Waxman to Chairman Burton (Mar. 20, 1998 and June 11, 1998).

<sup>51</sup> Letter from Rep. Waxman to Chairman Burton (June 11, 1998) (quoting Apr. 30, 1998, Committee meeting).

<sup>52</sup> The G.O.P.’s Own China Connection, Time (May 5, 1997).

<sup>53</sup> Subpoenas from House Committee on Government Reform and Oversight to: Benton L. Becker (June 5, 1997); NPF (June 5, 1997); Richard Richards (July 31, 1997); Signet Bank (June 5, 1997); Ambrous Young (June 5, 1997); Young Brothers Development (USA), Inc. (June 5, 1997); Young Brothers Development Co., Ltd. (June 5, 1997); and Committee document request to the RNC (June 6, 1997).

<sup>54</sup> Letter from Rep. Waxman to Chairman Burton (June 17, 1997) (quoting Letter from Richard Richards to Haley Barbour (Sept. 17, 1996)).

<sup>55</sup> See, e.g., Pakistan Lobbyist’s Memo Alleges Shakedown by House Probe Leader, Washington Post (Mar. 19, 1997); Representative Is Accused of Pressuring a Lobbyist, New York Times (Mar. 19, 1997); FBI Probes Funds Charge Against Burton, Washington Post (Mar. 22, 1997); House Chairman Linked to Lobbyist for Mobutu, New York Times (May 15, 1997); Burton, Others, Accepted Illegal Funds, The Hill (Apr. 16, 1997); Education Dept. Official Says Burton Pressured Him On Behalf of Contributor Who Runs Caribbean School, Roll Call (May 12, 1997); Burton Echoed Turkish Line After Interest Group Donations, The Hill (May 28, 1997).

noteworthy example is the activities of Triad Management Services.

According to news reports and evidence uncovered during the Senate investigation, Triad is a for-profit political consulting group founded by former Oliver North fundraiser Carolyn Malenick to serve as a "rapid-fire" attack mechanism for Republican candidates.<sup>56</sup> The Wall Street Journal reported that Triad advised Republican contributors on ways to circumvent federal contribution limits to individual candidates by laundering funds through other candidates and PACs who would then make a contribution to the contributor's candidate of choice.<sup>57</sup> According to Triad's attorney, Mark Braden, Triad spent over \$3 million on ads against Democratic candidates in about 40 races across the country. The ads were paid for by two non-profit groups, Citizens for Reform and Citizens for the Republic Education Fund, funded by Triad.<sup>58</sup> Triad was especially active in Kansas, where it spent over \$1 million to assist Senator Sam Brownback and Reps. Vince Snowbarger, Todd Tiahrt, and Jim Ryun.

The minority repeatedly urged Chairman Burton to investigate these allegations. At the November 7, 1997, Committee hearing, Rep. Carolyn Maloney asked Chairman Burton, "I would like to know when you are going to issue subpoenas to the groups and individuals involved in the Triad Management scheme to violate or evade the campaign finance laws?" Chairman Burton responded, "We are looking at it. And we very well may do that."<sup>59</sup> At the following hearing, Rep. Thomas Barrett asked Chairman Burton, "What about the Triad Management? Are we looking at that, Mr. Chairman?" Chairman Burton replied, "I am going to send a subpoena to Triad. Does that satisfy you?"<sup>60</sup> One month later at another Committee hearing, Rep. Tom Lantos asked FBI Director Louis Freeh to look into Triad's activities. Following this request, Chairman Burton stated, "There will be, as I said before, an investigation into the Triad matter."<sup>61</sup>

Despite this pledge, Chairman Burton never investigated Triad's activities. Chairman Burton did not issue any subpoenas to Triad, Citizens for Reform, or Citizens for the Republic Education Fund; and no depositions were taken of Ms. Malenick, Mr. Braden, or any Triad employee.

Ironically, at the same time he was refusing to investigate Triad for alleged federal elections law abuses, Chairman Burton was issuing 14 subpoenas to investigate allegations that the Kansas Democratic party evaded Kansas state elections law.<sup>62</sup>

<sup>56</sup> For Their Targets, Mystery Groups' Ads Hit Like Attacks From Nowhere, Washington Post (Mar. 9, 1997).

<sup>57</sup> Adviser Helps Political Donors Spread Their Wealth, Wall Street Journal (Apr. 10, 1997).

<sup>58</sup> Bank Records Provide Insights into Triad Funding; Firm Put \$1 Million into Kansas Races, Kansas City Star (Oct. 31, 1997).

<sup>59</sup> House Committee on Government Reform and Oversight, Hearings on White House Compliance with Committee Subpoenas, 105th Cong., 1st sess., 204 (Nov. 6, 7, 1997).

<sup>60</sup> House Committee on Government Reform and Oversight, Hearings on Johnny Chung: His Unusual Access to the White House, His Political Donations and Related Matters, 105th Cong., 1st Sess., 89 (Nov. 13, 14, 1997).

<sup>61</sup> House Committee on Government Reform and Oversight, Hearings on the Current Implementation of the Independent Counsel Act, 105th Cong., 1st. Sess., v. 2, 47-49 (Dec. 9, 10, 1997).

<sup>62</sup> Subpoenas from the House Committee on Government Reform and Oversight to: Richard Alldritt, Tom Beall, Steve Boyda, Micheline Z. Burger, Dorothy Davis, Henry Helgeson, Jerry

5. *The Majority Doctored Evidence and Suppressed Testimony to Make Democrats Appear Culpable*

The partisanship that plagued the Committee's investigation went beyond targeting Democrats and ignoring Republican abuses. Chairman Burton also engaged in the practice of providing the public with selective evidence that implicated Democrats in wrongdoing while withholding exculpatory evidence. The most egregious example of this practice involved the selective release of edited transcripts of Webster Hubbell's prison phone recordings.

a. *The Webster Hubbell Tapes*

On April 30, 1998, Chairman Burton released to the media edited transcripts of 54 tapes of Mr. Hubbell's prison telephone conversations subpoenaed from the Bureau of Prisons.<sup>63</sup> On May 3, Rep. Waxman wrote Chairman Burton to protest the release of the transcripts and to complain that Chairman Burton's "distortion in both words and meaning is inexcusable."<sup>64</sup> The following day, after reviewing the transcripts and the tapes, the minority staff issued a report detailing the "numerous alterations and omissions in the Master Log released by Mr. Burton."<sup>65</sup> This prompted Rep. Waxman to write to Chairman Burton, "It now appears that it is you or your staff who have intentionally altered the transcripts of tapes. . . . [A]s far as I am aware, [this action] is without precedent in the history of the U.S. House of Representatives."<sup>66</sup>

Following Chairman Burton's release of the transcripts, it was widely reported that the transcripts omitted crucial portions of the conversations that contained exculpatory information.<sup>67</sup> The Washington Post found, for example, that "the excerpts left out a statement by Hubbell that First Lady Hillary Rodham Clinton has 'no idea' of billing irregularities at the Little Rock law firm where they both worked. Also deleted was an assertion by Hubbell that he was not being paid hush money to keep him from cooperating with independent counsel Kenneth W. Starr's Whitewater investigation."<sup>68</sup> Side-by-side comparisons in the Washington Post and other newspapers of Chairman Burton's transcripts with what was actually said on the tapes revealed large discrepancies.<sup>69</sup>

Karr, Dennis Langley, Marge Petty, Doug Walker, and Constance Wray (Feb. 17, 1998). Tom Beall and Dennis Langley (Mar. 17, 1998); and the Kansas Democratic Party (Mar. 19, 1998). Several of these individuals first learned that they were subject to this investigation through press reports rather than from the Committee. See e.g., House Inquiry Turns to Kansas, Kansas City Star (Nov. 18, 1997); Fund-Raising Probe Heads for Kansas, Wichita Eagle (Nov. 19, 1997); Deposition of Douglas Walker, 44-45 (Feb. 23, 1998); and Deposition of Senator Marge Petty, 39-40 (Feb. 24, 1998).

<sup>63</sup> Subpoena from House Committee on Government Reform and Oversight to Federal Prison Camp, Cumberland, Maryland (May 8, 1997).

<sup>64</sup> Letter from Rep. Waxman to Chairman Burton (May 8, 1998).

<sup>65</sup> Memorandum Re: Analysis of Hubbell Master Tape Log, Government Reform and Oversight Committee Minority Staff (May 4, 1998).

<sup>66</sup> Letter from Rep. Waxman to Chairman Burton (May 4, 1998).

<sup>67</sup> See, e.g., Bridling G.O.P. Leader Says Tapes Speak for Themselves, New York Times (May 5, 1998); Burton Defends Hubbell Transcript Actions, Washington Post (May 5, 1998); Portions of Hubbell Prison Tapes Released, Los Angeles Times (May 5, 1998). See also letters from Rep. Waxman to Chairman Burton (May 3, 1998 and May 4, 1998); letters from Chairman Burton to Rep. Waxman (May 4, 1998); Memorandum Re: Analysis of Hubbell Master Tape Log, Government Reform and Oversight Committee Minority Staff (May 4, 1998).

<sup>68</sup> Democrats Hit Burton Over Tapes of Hubbell, Washington Post (May 4, 1998).

<sup>69</sup> See, e.g., Burton Defends Hubbell Transcript Actions, Washington Post (May 5, 1998); Excerpts from Prison Conversations With Hubbell, New York Times (May 5, 1998).

Chairman Burton's response to this criticism was to release the tapes in their entirety, without regard for Mr. Hubbell's legitimate privacy interests. As described by the Los Angeles Times, "The tapes released Monday—or, more accurately, tossed through the air by a Burton aide to a horde of reporters in a House committee room—cover several months' worth of conversations 'Inmate Hubbell,' as prison officials called him, had with his wife, sister, attorneys and daughters in 1996."<sup>70</sup>

In the following days, even Republican members criticized Chairman Burton's actions. At a closed Republican conference meeting, Speaker Gingrich told Chairman Burton, "I'm embarrassed for you, I'm embarrassed for myself, and I'm embarrassed for the conference at the circus that went on at your committee."<sup>71</sup> And Committee Republican Christopher Shays said that the release "calls into question our investigation. It reduces credibility when these kinds of things happen."<sup>72</sup>

Similarly, scores of newspaper editorials chastised Chairman Burton's conduct with headlines such as "Tale of the Tapes—Rep. Dan Burton Brings a Serious Inquiry Into Disrepute";<sup>73</sup> "Congressman Plays Dirty With Tapes";<sup>74</sup> and "Abuse of Privacy; Burton Should Be Censured for Leaking Excerpts from Hubbell's Jail Conversations."<sup>75</sup> The Washington Post editorialized, "Dan Burton was every bit as irresponsible and ham-handed as has been charged in releasing, as he did, doctored transcripts of the former associate attorney general's prison phone conversations."<sup>76</sup>

#### *b. Other Examples of the Selective Use of Evidence*

The Hubbell tapes were not the only instance in which Chairman Burton refused to present exonerating evidence. Chairman Burton rejected the minority's request to call a number of key witnesses to testify at the Hudson casino hearings in January 1998.<sup>77</sup> For example, Chairman Burton rejected the minority's request to call to testify locally elected officials who were on the record against the proposal, including former Republican representative Steve Gunderson, Republican state representative Sheila Harsdorf, and Republican governor Tommy Thompson.<sup>78</sup> These witnesses would have corroborated the Interior Department's contention that there was strong local opposition to the casino, which, rather than political contributions, was the crucial factor in the Department's decision to deny the casino application.<sup>79</sup>

Similarly, at the April 30, 1998, hearing on Venezuelan money in the 1992 campaign, Chairman Burton called two Assistant Dis-

<sup>70</sup> Portions of Hubbell Prison Tapes Released, Los Angeles Times (May 5, 1998).

<sup>71</sup> Burton Apologizes to GOP, Washington Post (May 7, 1998).

<sup>72</sup> Newt Defends Rep. In Tape Release, Associated Press (May 6, 1998).

<sup>73</sup> Pittsburgh Post-Gazette (May 8, 1998).

<sup>74</sup> Allentown Morning Call (May 5, 1998).

<sup>75</sup> Harrisburg Patriot (May 5, 1998).

<sup>76</sup> Mr. Burton's Transcripts, Washington Post (May 6, 1998).

<sup>77</sup> See, e.g., Letter from Rep. Waxman to Chairman Burton (Jan. 16, 1998).

<sup>78</sup> Letters from Rep. Waxman to Chairman Burton (Jan. 12, 1998 and Jan. 16, 1998).

<sup>79</sup> The majority also rejected the minority's request to call Deputy Director of the Bureau of Indian Affairs, Hilda Manuel, to testify. Ms. Manuel is the top-ranking career civil servant at the Bureau of Indian Affairs and played a key role in the Department's decision to deny the application. She would have told the Committee about a conversation with Secretary Babbitt in which he said he did not want a role in deciding the outcome of the application—evidence that directly refuted the majority's allegations. Deposition of Hilda Manuel, 98 (Jan. 6, 1998).



strict Attorneys from Manhattan to testify about evidence they uncovered of foreign conduit contributions, which they had provided to the Department of Justice. The majority alleged that the Department of Justice failed to properly investigate the matter because it involved a Democratic fundraiser. Chairman Burton, however, did not include representatives of the Department of Justice at the hearing. In response to the minority's concerns that the hearing was one-sided, Chairman Burton promised "we will have the Justice Department up here. It's now 4 o'clock, and we didn't want to run this thing on into the late night hours, but we will have the Justice Department up here and we will ask them the questions that were raised today."<sup>80</sup> Chairman Burton never in fact allowed the Justice Department to respond to the allegations.

This pattern was repeated when Chairman Burton refused to allow Attorney General Janet Reno to testify at the August 4, 1998, hearing on her decision not to appoint an independent counsel to investigate campaign finance violations. The independent counsel statute grants the authority to appoint an independent counsel solely to the Attorney General. Yet Chairman Burton allowed only the testimony of Department of Justice officials who recommended the appointment of an independent counsel. He refused to allow Attorney General Reno the opportunity to present the other side of the issue.<sup>81</sup>

#### B. THE INVESTIGATION WAS PLAGUED BY MISHAPS

From the outset of the investigation in January 1997, the Committee's investigation was characterized by mishaps and mistakes. The Committee issued subpoenas to the wrong witnesses, staked out the home of an innocent individual, released the President's private fax number, and caused an international incident on a trip to Taiwan. As the Atlanta Constitution commented in an editorial, "These fellows make Inspector Clouseau look like Sherlock Holmes."<sup>82</sup> The Committee's problems were summed up in one news article headline which read, "Burton's fund-raising probe efforts seems jinxed."<sup>83</sup>

##### 1. Subpoenas Issued to the Wrong Individuals

On at least three separate occasions, Chairman Burton issued subpoenas to individuals with no connection to the campaign finance investigation. On April 3, 1997, the majority issued a subpoena for the bank records of Georgetown University history professor Chi Wang instead of Los Angeles DNC contributor Chi Ruan Wang.<sup>84</sup> The 65-year-old professor told the Los Angeles Times, "This is unbelievable. . . . I have no idea why they have my name."<sup>85</sup> The Committee withdrew the subpoena, but rather than

<sup>80</sup> House Committee on Government Reform and Oversight, Hearing on Venezuelan Money and Presidential Election, 105th Cong., 2d Sess., 109 (Apr. 30, 1998).

<sup>81</sup> House Committee on Government Reform and Oversight, Hearing on the Need for an Independent Counsel in the Campaign Finance Investigation, 105th Cong., 2d. Sess., 66-67 (Aug. 4, 1998).

<sup>82</sup> Clinton's Foes Bungle Again, Atlanta Constitution (May 5, 1998).

<sup>83</sup> Burton's Fund-Raising Probe Effort Seems Jinxed, Associated Press (Sept. 17, 1997).

<sup>84</sup> Subpoena from House Committee on Government Reform and Oversight to Chevy Chase Bank F.S.B. and the National Capital Bank of Washington (Apr. 3, 1997).

<sup>85</sup> Investigators Mistakenly Issue Subpoena to Wrong DNC Donor, Los Angeles Times (Apr. 15, 1997).

apologizing to Mr. Wang, a majority investigator implied to the Los Angeles Times that Professor Wang may have still been under investigation and refused to acknowledge that the majority had made a mistake, stating: "Whether [Professor Wang] deserves a subpoena or not, we haven't decided, We've put it on hold . . . we're not sure we made [a mistake]." <sup>86</sup>

In September 1997, the Committee issued a subpoena to Brian Kim, a mail carrier from Downey, California.<sup>87</sup> A U.S. marshal tried to serve the subpoena on Mr. Kim at the U.S. Post Office. Unfortunately, the majority had identified the wrong Brian Kim. Mr. Kim said he was "scared" and "embarrassed" by the incident because his supervisor thought he had done something wrong. Mr. Kim called the majority and told them that they had the wrong person. He was told to write a letter to the majority confirming that fact, which he did. He never received any apology from the majority.<sup>88</sup>

One month later, in October 1997, the majority subpoenaed the phone records of LiPing Chen Hudson of Virginia.<sup>89</sup> Mrs. Hudson and her husband became aware of the subpoena only after they received notice from their local phone carrier that the documents had been subpoenaed. The Hudsons have not been involved in any political campaign this decade, raising their concerns that Mrs. Hudson was targeted because of her ethnic background.<sup>90</sup> In response to the error, majority spokesman told the Wall Street Journal, "To err is human"; he then passed the blame onto the telephone company for not double-checking with the majority before producing the records.<sup>91</sup>

## 2. The Committee's "Stake Out" of Felix Ma

As discussed below, the majority's practice is to conceal its domestic investigative travel from the minority. On a few occasions when minority staff was permitted to travel with the majority staff, however, the minority observed the majority staff use inappropriate and inept investigative techniques.

For example, during a nine-day investigative trip to Los Angeles in August 1997, Committee staff conspicuously "staked out" the residence of Felix Ma, whom the Committee hoped to interview. As CBS reported on *Face the Nation*, when Mr. Ma returned home, the investigators "became a virtual SWAT team, accosting him as he left his car."<sup>92</sup> It turned out that the Committee staff was interrogating the wrong Felix Ma. Afterwards, Mr. Ma introduced the investigators to his wife as the "political police."<sup>93</sup>

<sup>86</sup> Id.

<sup>87</sup> Subpoena from House Committee on Government Reform and Oversight to Brian Kim (Sept. 2, 1997).

<sup>88</sup> Minority counsel phone interview of Brian Kim (Sept. 1997).

<sup>89</sup> Subpoena from House Committee on Government Reform and Oversight to Bell Atlantic-Virginia, Inc. re: LiPing Chen Hudson (Sept. 19, 1997).

<sup>90</sup> Letter from Rep. James P. Moran to Chairman Burton (Oct. 28, 1997).

<sup>91</sup> House Panel's Campaign-Finance Probe Promises to be More Militant Than Senate's Investigation, Wall Street Journal (Nov. 5, 1997).

<sup>92</sup> CBS's *Face the Nation* (Sept. 14, 1997).

<sup>93</sup> Burton's Men Nailed Wrong Ma, Washington Post (Sept. 12, 1997). On the same trip, majority staff also snuck into and disrupted a condominium complex in a futile effort to locate a witness known as "Mr. Negara." In this instance, the majority staff rang the doorbell of a condominium unit occupied by a person with the last name Negara without knowing whether he

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### 3. *The Committee's Release of the President's Private Fax Number*

Another mishap involved the accidental release of the President's private fax number. As the Atlanta Journal-Constitution reported, "The House committee investigating campaign fundraising briefly posted President Clinton's personal fax number on the Internet . . . despite a request that it keep the number private."<sup>94</sup> The Committee obtained the fax number during a deposition and failed to redact the number before posting the deposition on its web page.<sup>95</sup> As a result of this mistake, the President was forced to change the fax number.

### 4. *The Committee Actions in Taiwan*

Chairman Burton sent five investigators to Taiwan in March 1998 to interrogate high-level Taiwanese officials and businessmen about campaign contributions.<sup>96</sup> The questioning enraged members of the Taiwanese Parliament who "claimed that the dignity and judicial sovereignty of the nation has been infringed upon."<sup>97</sup> According to a Taiwanese newspaper, the lawmakers "condemned" the Ministry of Foreign Affairs for allowing the investigators into the country and said "that Taiwan's international image had been damaged," thus setting off an international diplomatic incident.<sup>98</sup> As a result, "[t]he investigators left with little more than a long list of canceled meetings."<sup>99</sup>

### 5. *Insensitivity to the Concerns of Asian-Americans*

Unfortunately, many of the victims of the Committee's improper conduct were Asian-Americans who were subject to highly intrusive subpoenas seeking their personal banking records, credit card records, phone records, and travel records. In total, 423 out of the Committee's 684 documents subpoenas sought information relating to individuals with Asian surnames. The Committee also sought INS records for many Asian-Americans, even though, in many instances, this information was decades old and had no relevance to

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was the "Mr. Negara" for whom they were looking. There was no answer. Despite the uncertainty that this was the correct individual, the staff trespassed onto the property by slipping into the building behind another individual. After knocking loudly and persistently on Mr. Negara's door and receiving no answer, the majority counsel knocked on neighboring doors, asked passersby if they knew Mr. Negara, and contacted the building manager and questioned her about Mr. Negara. The manager complained that these men had entered the building without permission from the residents or the management. *Id.*

Also on the trip, the majority staff attempted to contact Cindy Tashima. Ms. Tashima, who is a "diminutive" woman and was home alone, was intimidated by the large men in dark suits repeatedly pounding on her door, who she later described as "look[ing] like the Men in Black," *Id.*; CBS's *Face the Nation* (Sept. 14, 1997). Ms. Tashima's only connection to the investigation was that in 1990 she worked for less than one year at a company listed in 1991 as the employer of an individual who had made a suspect contribution. Letter from Rep. Waxman to Chairman Burton (Sept. 4, 1997).

<sup>94</sup> Clinton's Private Fax Number Put on Web in "Lapse," Atlanta Journal-Constitution (Nov. 22, 1997).

<sup>95</sup> Deposition of Dick Morris, 90 (Aug. 21, 1997).

<sup>96</sup> Burton's Campaign-Finance Probe Is Drawing Criticism for Mounting Costs and Slow Progress, Wall Street Journal (Mar. 27, 1998).

<sup>97</sup> Visit by US Aides Sparks Controversy, Free China Journal (Mar. 20, 1998).

<sup>98</sup> MOFA Rebuked Over Handling of Probe, China News (Mar. 19, 1998).

<sup>99</sup> Burton's Campaign-Finance Probe Is Drawing Criticism for Mounting Costs and Slow Progress, Wall Street Journal (Mar. 27, 1998).

this investigation.<sup>100</sup> This raises serious questions of whether the investigation unfairly targeted Asian-Americans.

During the House and Senate campaign finance investigations, Asian-American activists expressed their concern that their political participation was being unfairly scrutinized. Karen Narasaki of the National Asian Pacific American Legal Consortium said that the investigations imposed "a chilling impact on Asian-American political involvement."<sup>101</sup> Francey Lim Youngberg of the Asian Pacific American Institute for Congressional Studies commented, "We don't condone any illegal activities, but we don't want the actions of a few individuals to taint a whole community."<sup>102</sup> As a result of these concerns, a coalition of Asian-American civil rights groups filed a complaint with the U.S. Commission on Civil Rights in September 1997, alleging that public officials, the two political parties, and the media have "engaged in a pattern of bias based on race and national origin." According to the complaint, there is a clear pattern of "bias and unequal treatment destructive of the rights and interests of Asian-Pacific Americans and legal immigrants."<sup>103</sup>

At the Committee's September 24, 1997, business meeting, Rep. Tom Lantos spoke about the harmful perceptions created by this investigation:

I believe that there is a grave danger that stereotyping and Asian bashing will become and, in many instances, have become part and parcel of this investigation. . . . This investigation, perhaps inadvertently, has clearly contributed to stereotyping and racebaiting. As one who is singularly conscious of this issue, I want to call attention to this issue because Asian-Americans have as much right to participate in the political process as do Americans of any other origin. Deliberately or otherwise, Asian-Americans have been the target of both of these investigations to an unacceptable and overwhelming degree . . . The last thing this country needs at this stage is an attempt to whip up racial tensions and Asian bashing. These hearings clearly have contributed to a climate of xenophobia, which we ought to avoid.<sup>104</sup>

This insensitivity to the concerns of Asian-Americans regarding the investigation was also evident in the full House. On July 22, 1997, Rep. Jack Kingston went to the House floor and stated that the illegal donations were "only the tip of the egg roll."<sup>105</sup> Majority Whip Tom DeLay of Texas mocked the DNC in a floor speech in July for accepting contributions from people with foreign-sounding names:

If you have a friend by the name of Arief and Soraya, and I cannot even pronounce the last name, Wiriadinata, some-

<sup>100</sup> See, e.g., Committee document request to the Immigration and Naturalization Service (Aug. 13, 1997) (Committee requested that INS "provide the Committee with a copy of any 194 records and the entire contents of the alien registration a.k.a. 'A' files" for 47 individuals).

<sup>101</sup> Asian-Americans See Rising Racism, USA Today (July 15, 1997).

<sup>102</sup> Asian American Donors Feel Stigmatized: DNC Puts Unwanted Focus on Growing Political Group, Washington Post (Sept. 8, 1997).

<sup>103</sup> Asian Pacific American Petition to the U.S. Commission on Civil Rights (Sept. 11, 1997).

<sup>104</sup> Rep. Lantos, Committee on Government Reform and Oversight, Business Meeting (Sept. 27, 1997).

<sup>105</sup> Rep. Kingston, Congressional Record, H5500 (July 22, 1997).

thing like that, who donated \$450,000 to the DNC and was friends with a guy named Johnny Huang, and later returned it because Wiriadinata could not explain where it came from, then probably there is a high probability that it's money from foreign nationals . . . I could go on with John Lee and Cheong Am, Yogesh Ghandi, Ng Lap Seng, Supreme Master Suma Ching Hai and George Psaltis.<sup>106</sup>

Regrettably, this insensitivity reinforced the views of many who saw a racial bias in the Committee's investigation of alleged campaign finance abuses.

#### *6. Republican Acknowledgment of the Committee's Incompetence*

These mishaps and mistakes have embarrassed even Republican members and staff. They have called the investigation "a big disaster,"<sup>107</sup> "incompetent,"<sup>108</sup> "unprofessional,"<sup>109</sup> and "[a]n embarrassment, like Keystone Cops."<sup>110</sup> According to one former senior Republican investigator, Charles Little, "[n]inety percent of the staff doesn't have a clue as to how to conduct an investigation."<sup>111</sup>

The majority's first chief counsel, John Rowley, resigned in protest over the Committee's abuses. In his letter of resignation, Mr. Rowley stated that he had "been unable to implement the standards of professional conduct I have been accustomed to at the U.S. Attorney's office."<sup>112</sup> The Washington Times reported that Mr. Rowley was concerned that David Bossie, Chairman Burton's chief investigator, "was trying to use the probe to 'slime' the Democrats, while Mr. Rowley wanted 'to follow where the evidence leads.'"<sup>113</sup>

Ten months later, in May 1998, Speaker Newt Gingrich forced Chairman Burton to fire Mr. Bossie after the release of the Hubbell tapes.<sup>114</sup> At a closed-door meeting of the Republican Conference at which Chairman Burton refused to apologize for the release of the tapes, Speaker Gingrich told Chairman Burton, "You should be embarrassed."<sup>115</sup>

As a result of these mishaps, Speaker Gingrich began to consider plans to remove the campaign finance investigation from Chairman Burton's jurisdiction. According to a report in the Los Angeles Times in May 1998, "House Republican leaders decided . . . to shift at least part of the troubled 16-month investigation of Democratic campaign fund-raising out of the hands of Rep. Dan Burton (R-Ind.), who has directed an inquiry beset by partisanship and personal rancor."<sup>116</sup>

Among the options considered were transferring the investigation to another committee or creating a special select committee. Roll

<sup>106</sup> Rep. DeLay, Congressional Record, H5485 (July 14, 1998). After being criticized for his floor statement, however, Rep. DeLay said, "In no way did I mean to suggest that Asian-Americans should not participate in our democracy," House GOP Whip Assailed Over Remarks on Foreign-Sounding Names, Apologizes, Boston Globe (July 18, 1998).

<sup>107</sup> GOP Memo Targets 3 N.E. Congressmen to Co-Opt Democrats, Boston Globe (May 6, 1998).

<sup>108</sup> Cox Leads Defeat of Burton, Waxman Agreement, Roll Call (Sept. 29, 1997).

<sup>109</sup> Burton Tape Fiasco Pitted Panel's Pros Vs. Pols, The Hill (May 13, 1998).

<sup>110</sup> CNN's Inside Politics (Sept. 16, 1997).

<sup>111</sup> Burton Tape Fiasco Pitted Panel's Pros Vs. Pols, The Hill (May 13, 1998).

<sup>112</sup> Letter from John P. Rowley III to Chairman Burton (July 1, 1997).

<sup>113</sup> Administration Dismisses Finance Probes as 'Politics,' Washington Times (July 3, 1997).

<sup>114</sup> Burton Apologizes to GOP, Washington Post (May 7, 1998).

<sup>115</sup> Gingrich Blasts Burton in Hubbell Tapes Furor, Roll Call (May 7, 1998).

<sup>116</sup> Gingrich to Place Donor Inquiry in New Hands, Los Angeles Times (May 14, 1998).

Call reported at the time that “[t]he Speaker is prepared . . . [to move] the multimillion-dollar campaign probe to the House Oversight Committee.”<sup>117</sup> Later it was reported that Speaker Gingrich “floated the idea of creating a special committee to handle the campaign finance investigation.”<sup>118</sup> Ultimately, the Speaker decided to appoint Rep. Christopher Cox as chairman of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China which was authorized to investigate allegations that the Clinton administration allowed the transfer of missile technology to China in exchange for campaign contributions.<sup>119</sup>

#### C. THE COMMITTEE ABUSED ITS POWERS

Successful congressional investigations have always been conducted on a fair and bi-partisan basis. The best investigations have gone to great lengths to involve the minority and protect the rights of minority members. The House Watergate investigation, for example, gave both the chairman and the ranking minority member identical authority regarding the issuance of subpoenas and the release of documents.<sup>120</sup> Similarly, in the Iran-Contra investigation, the majority and minority jointly made all procedural decisions.<sup>121</sup>

Chairman Burton’s campaign finance investigation abandoned these procedural safeguards and vested unprecedented powers in Chairman Burton, who, in turn, trampled the rights of individuals and the minority members. A commentary in the Los Angeles Times described the conduct of the majority as follows:

In the year or so since the House Government Reform and Oversight Committee began its wide-ranging probe into Democratic fund-raising practices . . . [t]hose forced to appear are grilled in private, sometimes for hours at a stretch, with few of the protections from badgering that shield witnesses in the real world. . . . This would be funny if it were not redolent of a mentality that Washington has not seen for some decades. The term ‘McCarthyism’ is used too often and too loosely, but there are times when it is useful, and one of those is now.

What made the McCarthy phenomenon so sinister was . . . several grotesque characteristics of the investigations themselves. First, the investigations could be triggered by legal political conduct. Second, they probed broadly, even indiscriminately, on the ground that some people actually turn out to be guilty. Third, anything you said to one investigation could be used against you in another, creating boundless jeopardy for anybody questioned. Fourth, merely

<sup>117</sup>House Democrats and Republicans Set for Scandal-Driven, Contentious Week, Roll Call (May 4, 1998). See also Burton Fires Aid Over Tapes Fiasco, Washington Times (May 7, 1998).

<sup>118</sup>Gingrich Discusses Burton Ouster With Gephardt But Chairman Insists He Still Has Control, Roll Call (May 14, 1998).

<sup>119</sup>Cox Pledges Small Staff Despite Near-Record Budget Authorization, The Hill (July 1, 1998).

<sup>120</sup>H. Res. 803, sec. 2(b), Rpt. 93-774 (Feb. 1, 1974).

<sup>121</sup>Letter from Rep. Lee H. Hamilton to Rep. Waxman (June 16, 1997).

being investigated could ruin honest and dishonest alike.  
All those things are happening now.<sup>122</sup>

### *1. The Committee Abused the Subpoena Power*

The subpoena power is one of the most coercive powers of Congress. The issuance of a subpoena compels an individual to appear before, or submit documents to, a congressional committee against his or her will. For this reason, the issuance of a subpoena in past investigations was regarded as a serious step that was taken only with (1) the concurrence of the ranking minority member or (2) a committee vote. These safeguards provided minimal checks and balances that sought to insure that the subpoena power was not abused for partisan political advantage. Even when Democratic chairmen had the power to issue subpoenas unilaterally, they refrained from exercising this power. In fact, since the McCarthy hearings in the 1950s, no Democratic chairman of a committee ever issued a subpoena unilaterally, without either minority consent or a committee vote.

In the Iran-Contra investigation, for example, Democratic Chairman Lee Hamilton had the authority to issue subpoenas after “consultation” with the ranking minority member,<sup>123</sup> but he never used this authority unilaterally. Rep. Hamilton described the subpoena procedures he used during the Iran-Contra and other investigations as follows:

As a matter of practice in the Iran-Contra investigation, the four Congressional leaders of the Select Committee—Senators Inouye and Rudman, Representative Cheney and I—made decisions jointly on all matters of procedural issues, including the issuance of subpoenas and the taking of depositions. I do not recall a single instance in which the majority acted unilaterally. In fact, I do not recall a single instance in which our decisions were not unanimous. With respect to the October Surprise Task Force, I followed a similar approach with Henry Hyde.<sup>124</sup>

This practice of obtaining either minority concurrence or a committee vote was also followed in the Senate Whitewater investigation<sup>125</sup> and the Senate campaign finance investigation.<sup>126</sup> It was even followed in the Government Reform and Oversight Committee during the 104th Congress under Chairman William Clinger. In a letter to Rep. Cardiss Collins stating how he intended to interpret the Committee rules, Chairman Clinger wrote, “I shall not authorize such subpoenas without your concurrence or the vote of the committee. I believe that this new rule memorializes the

<sup>122</sup> Jonathan Rauch, In the Loop of McCarthyite Investigations, Los Angeles Times (Mar. 15, 1998).

<sup>123</sup> House Select Committee to Investigate Covert Arms Transactions with Iran, Committee rule 4, 100th Cong., 1st Sess. (1987).

<sup>124</sup> Letter from Rep. Hamilton to Rep. Waxman (June 16, 1997).

<sup>125</sup> S. Res. 20 (May 17, 1995).

<sup>126</sup> Senate Committee on Governmental Affairs, Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, S. Rpt. No. 167, 105th Cong., 2d Sess., v. 6, 8687 (1998) (hereafter “Senate Report”).

long-standing practice of this committee to seek a consensus on the issuance of a subpoena.”<sup>127</sup>

Chairman Burton, however, shunned this longstanding precedent. In the Committee rules adopted on February 12, 1997, and in the investigation’s document protocol adopted on April 10, 1997, Chairman Burton sought and obtained the power to issue subpoenas unilaterally, without minority consent or a Committee vote.<sup>128</sup> He then proceeded to issue 758 unilateral subpoenas. These subpoenas were for both documents (684 subpoenas) and witnesses (74 subpoenas).

Near the end of the investigation, after the minority members refused to support additional immunity requests without procedural reforms, the Committee’s document protocol was amended to provide for a vote of a five-member working group, consisting of three Republicans and two Democrats, in the event that the minority objected to the issuance of a subpoena.<sup>129</sup> Even this limited safeguard, however, was shown to be a sham procedure when Chairman Burton denied the minority an opportunity to present its objections to each of the majority members before seeking working group approval for a subpoena to Attorney General Reno.<sup>130</sup>

Chairman Burton’s unilateral subpoena power led to many abuses. As discussed above, he issued subpoenas to the wrong witnesses. He also issued many subpoenas that did not meet the requirements of relevancy, admissibility, and specificity that apply in a judicial context. For example, Chairman Burton subpoenaed all DNC records relating to its senior staff.<sup>131</sup> This request covered matters relating to the DNC’s internal budgeting, campaign strategies, and political activities unrelated to fundraising. The subpoena also demanded all DNC records relating to high-level White House contact with the DNC and all DNC phone records from January 20, 1993, forward without limiting the request to fundraising.

Chairman Burton also issued a broad subpoena to the White House for all phone records from Air Force I and Air Force II and all records of visitors to the White House residence since 1993, among other things.<sup>132</sup> The subpoena was issued without regard for its impact on national security or the Clinton family’s privacy. For example, the request for all visitors to the White House made no exception for Chelsea Clinton’s friends, relatives of the First Family, or visits by doctors or clergy.

In another example, Chairman Burton abused the subpoena power by ordering a private citizen to violate the law. Chairman Burton subpoenaed accountant Donald Lam for all tax preparation material related to Ted Sioeng, his family, or their businesses.<sup>133</sup> Mr. Sioeng objected to disclosure of this information. As a result of

<sup>127</sup> Letter from Chairman Clinger to Rep. Cardiss Collins (Mar. 6, 1996). But see Letter from Rep. Cardiss Collins to Chairman Clinger (Aug. 2, 1996) (Despite this commitment, Chairman Clinger unilaterally issued four subpoenas relating to the Travel Office-FBI file acquisition investigation during the August 1996 recess).

<sup>128</sup> Committee rule 18(d) and Document Protocol § A.2(a) (Apr. 10, 1997).

<sup>129</sup> Committee Document Protocol § A.2(a) (June 23, 1998).

<sup>130</sup> Letter from Rep. Waxman to Chairman Burton (Aug. 24, 1998).

<sup>131</sup> Subpoena from House Committee on Government Reform and Oversight to the Democratic National Committee (Mar. 4, 1997).

<sup>132</sup> Subpoena from House Committee on Government Reform and Oversight to the Executive Office of the President (Mar. 4, 1997).

<sup>133</sup> Subpoena from House Committee on Government Reform and Oversight to Donald Lam (Jan. 30, 1998).



the client's objection, federal law prevented Mr. Lam from providing the material without a court order.<sup>134</sup> Specifically, 26 U.S.C. § 7216 prohibits someone "engaged in the business of preparing . . . [tax] returns" from "disclos[ing] any information furnished to him for, or in connection with, the preparation of any such return." Violating the statute subjects the accountant to criminal penalties including a fine and imprisonment.

Notwithstanding Mr. Lam's obligations under federal law, Chairman Burton ruled in a February 20, 1998, letter that Mr. Lam must provide the information to the Committee or risk being held in contempt of Congress.<sup>135</sup> Not only did this action unilaterally compel a private citizen to commit a federal crime, it also circumvented 26 U.S.C. § 6103, which provides that tax records can be obtained only by the House Ways and Means Committee, the Senate Finance Committee, or the Joint Committee on Taxation, absent special authorization from the House. In effect, Mr. Lam was put in the position of having to choose between violating the tax code, which would subject him to a possible fine or imprisonment, or facing congressional contempt.<sup>136</sup>

Unfortunately, Mr. Lam was not the only accountant to be subpoenaed for tax preparation materials. Chairman Burton also subpoenaed Michael C. Schaufele for tax preparation materials related to Webster Hubbell.<sup>137</sup>

In contrast to Chairman Burton's approach, former House Commerce Committee Chairman John Dingell followed the proper course in attempting to obtain tax records of junk bond financier Michael Milken during a 1990 investigation of Mr. Milken and his firm, Drexel Burnham Lambert. Once it was determined that a request for these records would violate 26 U.S.C. § 7216, Chairman Dingell applied to the court for an order to obtain the documents.<sup>138</sup>

Chairman Burton also unilaterally issued subpoenas that appeared to be politically motivated and were unrelated to the campaign finance investigation, including a number of requests related to the matter of the President's relationship with Monica Lewinsky. For example, Chairman Burton subpoenaed the Investigative Group, Inc. (IGI), the company run by long-time Washington detective Terry Lenzner, for any documents relating to Independent Counsel Kenneth Starr's investigation or members of Congress.<sup>139</sup> According to *George*:

Burton assumed he would be handed a treasure trove of documents that would embarrass the Democrats. But when Lenzner and his lawyers searched their files, they made a startling discovery: The investigator known for digging dirt for Clinton had actually done more snooping for Republicans than Democrats. When Lenzner's lawyers

<sup>134</sup> Letter from Mark MacDougall, et al., to Chairman Burton (Feb. 13, 1998).

<sup>135</sup> Letter from Chairman Burton to Steven R. Ross, et al. (Feb. 20, 1998).

<sup>136</sup> Letter from Rep. Waxman to Chairman Burton (Feb. 27, 1998).

<sup>137</sup> See Subpoena from House Committee on Government Reform and Oversight to Michael Schaufele (Feb. 4, 1998).

<sup>138</sup> See Application for Order for Providing Tax Preparer Information, Misc. No. 90-231 (D.D.C. Aug. 14, 1990).

<sup>139</sup> Subpoena from House Committee on Government Reform and Oversight to Investigative Group, Inc. (Mar. 30, 1998).

made that fact known to Burton's staff, the request was quickly withdrawn.<sup>140</sup>

Chairman Burton also subpoenaed the White House for all records relating to the White House Counsel's office and First Lady Hillary Rodham Clinton concerning the acquisition of FBI background files by the White House.<sup>141</sup> This subpoena was issued despite the fact that the FBI file issue was thoroughly investigated by the Committee during the 104th Congress.<sup>142</sup>

## 2. *The Committee Abused the Deposition Power*

In June 1997, the House voted along party lines to give Chairman Burton authority to conduct staff depositions for the campaign finance investigation.<sup>143</sup> This special power is granted only rarely by the House. According to the House Rules Committee, the House is "generally reluctant to report resolutions granting staff deposition authority . . . and believes that such special investigative authority should not be necessary."<sup>144</sup> In fact, the only previous time that this power was granted to this Committee was in the 104th Congress to conduct the travel office and FBI file investigations.

The deposition power is disfavored because it delegates from the Committee members to staff the power to gather testimony, under oath, outside the public's view. According to the Rules Committee, the normal hearing procedure, which requires two members to be present to take sworn testimony, was adopted to "'abolish[] the custom of one-man subcommittees"—one of the major abuses of the McCarthy era."<sup>145</sup>

After receiving deposition authority, the Committee deposed 161 people—over more than 650 hours—in connection with this investigation. Of these 161 individuals, only 15 were ever called to testify at a hearing. Most of the depositions were used by Committee staff to conduct a wide-ranging fishing expedition rather than to pursue legitimate investigative leads. Only two of these witnesses were deposed to investigate Republican fundraising abuses.

These depositions were extremely burdensome on individuals. Legal representation for a deponent often costs over \$300 per hour. It is estimated that costs incurred for a deponent, including time

<sup>140</sup> George Magazine (Aug. 1998). In addition to subpoenas, Chairman Burton also sent interrogatories related to the Lewinsky matter. For example, on Apr. 1, 1998, Chairman Burton sent interrogatories to Democratic fundraiser Nathan Landow. The interrogatories were issued only after the press reported that Kathleen Willey, who accused President Clinton of making an unwanted sexual advance, alleged that Mr. Landow tried to influence her testimony in the Paula Jones lawsuit. Although Chairman Burton said he would not investigate the President's sexual conduct, request 27 of the interrogatories asked Mr. Landow to "[d]escribe any conversation or contact you have knowledge of regarding making a suggestion to any potential witness before . . . a grand jury or other legal proceeding." Chairman Burton also sent interrogatories to the White House for information about its assertions of executive privilege in the Lewinsky matter, the White House Counsel's office debriefings of witnesses appearing before Mr. Starr's grand jury, and information about White House attorney work-product that was shared with the President's personal attorney in the Jones and Lewinsky matters.

<sup>141</sup> Subpoena from House Committee on Government Reform and Oversight to the Executive Office of the President (Jan. 28, 1998).

<sup>142</sup> House Committee on Government Reform and Oversight, Investigation Into the White House and Department of Justice on Security of FBI Background Investigation Files, H. Rpt. No. 104-862, 104th Cong., 2d Sess. (1996).

<sup>143</sup> See H. Res. 167, sec. 3, H. Rpt. 105-139 (June 20, 1997).

<sup>144</sup> House Committee on Rules, Providing Special Authorities to the Committee on Government Reform and Oversight to Obtain Testimony on the White House Travel Office Matter, H. Rpt. No. 104-472, 104th Cong., 2d Sess., 10 (1996).

<sup>145</sup> *Id.* at 7.

spent traveling, missed work, preparation time, and legal representation averages \$10,000 for a day of deposition testimony. According to the attorney for one life-long government employee, this individual alone incurred \$50,000 in legal bills related to congressional investigations.<sup>146</sup> Even an unpaid White House intern was forced to obtain an attorney to represent her at a deposition relating to the White House Database (WhoDB).<sup>147</sup>

The resolution giving the Committee deposition power, H. Res. 167, authorized the Committee to take depositions to investigate "political fundraising improprieties and possible violations of law."<sup>148</sup> Over the objections of the minority, however, Chairman Burton's staff repeatedly pursued questions that did not fall within this scope. The overall approach of the majority with respect to the scope of the depositions was best summarized by one attorney working for the majority, who told the minority staff that they had been instructed to "blow off" minority objections to questions because witnesses will almost always answer questions in order to finish the deposition.<sup>149</sup> In the Charles Duncan deposition, majority counsel even asserted that H. Res. 167 should "be read in the disjunctive," thereby authorizing the majority to investigate any "possible violation of law" regardless of its relationship with political fundraising.<sup>150</sup>

Throughout the investigation, Committee depositions were conducted haphazardly, without any discernible investigative strategy or plan. In the first three months that depositions were taken, the majority asked questions on over 36 unrelated topics.<sup>151</sup> To take one example of how far afield the depositions strayed, Dick Morris was asked under oath, "Did there come a time when Mr. Stephanopoulos told you about the discovery of life on Mars?"<sup>152</sup> On several occasions, the majority staff asked deponents for information about their private lives: A former White House intern was asked the name of his girlfriend;<sup>153</sup> one White House employee was asked, "Did you ever receive a drug test?";<sup>154</sup> and another former White House staffer was asked what type of car she drives.<sup>155</sup>

Other witnesses were unfairly harassed during their depositions. George Skibine, for example, is a 17-year career civil servant at the Department of the Interior. The majority insisted on forcing Mr. Skibine to sit through two days of deposition testimony even though he had been previously deposed by the Senate on the same topic and is a diabetic who needs to monitor his insulin carefully. At one point during the deposition, Rep. Horn even accused Mr. Skibine of providing false testimony because he did not like the answers Mr. Skibine was providing, stating: "Isn't it a fact that no matter what question we raise, we're wasting our time because you were given an order as to how to come out on this?"<sup>156</sup>

<sup>146</sup> Minority conversation with Martin Lobel, attorney for Export-Import Bank Director Maria Haley (Oct. 16, 1997).

<sup>147</sup> Deposition of Jacqueline Bellanti, 62-63 (Oct. 7, 1998).

<sup>148</sup> H. Res. 167, sec. 1 and sec. 3(1) (June 20, 1997).

<sup>149</sup> Letter from Rep. Waxman to Chairman Burton (Sept. 10, 1997).

<sup>150</sup> Deposition of Charles Duncan, 8 (Aug. 29, 1997).

<sup>151</sup> See letter from Rep. Waxman to Chairman Burton (Sept. 10, 1997).

<sup>152</sup> Deposition of Dick Morris, 174 (Aug. 21, 1997).

<sup>153</sup> Letter from Rep. Waxman to Chairman Burton (Sept. 10, 1997).

<sup>154</sup> Deposition of Karen Hancox, 17 (Aug. 28, 1997).

<sup>155</sup> Deposition of Janice Enright, 58 (Aug. 19, 1997).

<sup>156</sup> Deposition of George Skibine, 164 (Jan. 13, 1998).

Another deponent, Charles Intrigo, was forced to travel from Miami to Washington, at taxpayers expense, even after his attorney informed the Committee that Mr. Intrigo would assert his Fifth Amendment privilege and not testify. Although Mr. Intrigo was concerned about testifying because it had recently been reported in at least two major newspapers that Mr. Intrigo was under investigation by the Department of Justice,<sup>157</sup> the majority responded that Mr. Intrigo did not need to assert his Fifth Amendment privilege because the applicable statute of limitations had run. The majority also threatened to hold Mr. Intrigo in contempt if he chose to assert his constitutional right.<sup>158</sup> This advice was termed "ludicrous at best" by Steve Ryan, a professor at Georgetown University Law Center who teaches a course on congressional investigations.<sup>159</sup> It also conflicted with a D.C. Bar Association ethics opinion, which advises that it is unethical for congressional counsel to require a witness to appear after being advised that the witness will invoke a Fifth Amendment privilege.<sup>160</sup> A Department of Justice regulation establishes a similar standard for federal prosecutors.<sup>161</sup>

The majority's actions relating to the deposition of Marsha Scott also typify the unreasonable and harassing approach employed by the majority staff.<sup>162</sup> Ms. Scott is the deputy director of the White House Office of Personnel. She was a cooperative witness, and she had never been accused of wrongdoing. Nevertheless, Ms. Scott was forced to provide three days of deposition testimony over 18 hours before the Senate, and an additional five days of deposition testimony over 20 more hours before this Committee.<sup>163</sup> Despite these eight days of deposition testimony, Ms. Scott was never called as a substantive witness at a hearing and had little information relevant to the Committee's investigation.

The procedures adopted by the Committee for the taking of depositions effectively prevented the minority from any meaningful participation. The rules allowed the majority "as much time as is nec-

<sup>157</sup> Letter from Robert Plotkin to Majority Counsel Richard Bennett (Feb. 18, 1998).

<sup>158</sup> *Id.*

<sup>159</sup> Burton Team Threatens Contempt for Witness, *The Hill* (Feb. 25, 1998).

<sup>160</sup> District of Columbia Bar Association Ethics Opinion No. 31 (Mar. 29, 1977).

<sup>161</sup> Letter from Robert Plotkin to Richard Bennett (Feb. 18, 1998).

<sup>162</sup> See Letters from Rep. Waxman to Chairman Burton (Apr. 1, 1998, and Apr. 3, 1998).

<sup>163</sup> At one point, counsel for Ms. Scott tried to protect his client from further harassment by the Committee. After three days of deposition testimony, the majority staff insisted that Ms. Scott appear for a fourth day to answer questions about her conversations with the White House Counsel's office about a memorandum she had written which she had originally declined to answer out of concerns about the attorney-client privilege. Ms. Scott's attorney suggested that Ms. Scott provide the Committee with a sworn affidavit about that conversation. The majority staff rejected this offer and insisted that she appear for more testimony.

Since Ms. Scott had already provided three days of testimony, Ms. Scott's attorney attempted to restrict the additional testimony to questions about the conversations regarding the memo. At the deposition, taken on Apr. 1, 1998, the majority began asking questions on other topics. In response, her attorney stated, "This harassment is going to end. . . . If you do not have more questions about the substance and the conversations—about the substance of the June memo, then we are going to leave." After responding to a number of additional questions unrelated to the privilege issue, the attorney advised Ms. Scott to end the deposition.

Hours later, National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee Chairman David McIntosh called a hearing for 8:00 p.m. that night, and Chairman Burton subpoenaed Ms. Scott to testify. This action violated Committee rules and precedent. The Committee's document protocol required 24-hours notice to the minority before the chairman can issue a subpoena, absent exigent circumstances that did not apply in that case. Furthermore, House and Committee rules require the majority to give the minority seven days notice of hearings. This rule can be waived by the Committee only for "good cause." This provision, however, was never used before in the Government Reform and Oversight Committee without the consent of the minority. Letter from Rep. Waxman to Chairman Burton (Apr. 3, 1998).

essary to ask all pending questions” before the minority had an opportunity to ask its first question.<sup>164</sup> The practical effect of this rule was that the majority asked hours—if not days—of questions before the minority was allowed to ask questions. Former DNC finance director Richard Sullivan, for example, was deposed by the majority for 18 hours over four days before the minority was allowed to ask its first round of questions.<sup>165</sup>

### 3. *The Committee Abused the Immunity Power*

A grant of immunity is one of the most significant actions an investigative committee can take. Since immunity shields the witness from criminal prosecution, it is ordinarily given only for testimony that is accurate and important and that cannot be secured through other means. The committee proposing immunity also usually takes prudent steps to insure that the witness being granted immunity does not take an “immunity bath” to protect him or herself from prosecution for unrelated offenses.

Unfortunately, the majority did not take such precautions. At the first campaign finance hearing on October 9, 1997, the Committee heard testimony from David Wang. The majority had requested that the minority join with them to vote to give Mr. Wang immunity for his testimony about illegal conduit contributions. The minority agreed—only to find out that the majority had obtained unreliable testimony and given a witness inappropriate immunity.

Mr. Wang testified that John Huang visited him at his place of business in Los Angeles on August 16, 1996, to solicit campaign contributions for the DNC. Mr. Wang testified that Mr. Huang indicated that he would be reimbursed for his contribution. Mr. Wang proceeded to write two \$5,000 checks on behalf of himself and his friend, Daniel Wu.<sup>166</sup>

This testimony was demonstrably inaccurate. At the hearing, the minority released a staff report which detailed documentary evidence that “the meeting that Mr. Wang testified about could not have occurred because John Huang was in New York City—not Los Angeles—from at least August 15, 1996 through at least August 18, 1996.”<sup>167</sup> The evidence included Mr. Huang’s hotel receipts, eyewitness statements, and news reports.

Not only was Mr. Wang’s testimony inaccurate, the majority also failed to properly investigate Mr. Wang’s other activities before proposing that he be given immunity. The result was a major embarrassment for the Committee: Mr. Wang received immunity for potentially serious immigration and tax violations unrelated to the

<sup>164</sup> Committee Rule 20 (Apr. 10, 1997). This rule differed dramatically from the rule used by the Committee during the 104th Congress. During the Travel Office-FBI File investigation, questioning was conducted in one-hour rounds, alternating between the majority and the minority, until both sides gathered the necessary information. See Committee Rule 19(e) (104th Cong.). At the June 23, 1998, Committee meeting, Chairman Burton agreed to amend this rule to provide for alternating one-hour rounds of questions as part of a compromise to get minority support for immunity for four witnesses. This change, however, did not occur until after the Committee had already taken 153 depositions.

<sup>165</sup> Deposition of Richard Sullivan (Mar. 5, 1998).

<sup>166</sup> House Committee on Government Reform and Oversight, Hearings on Conduit Payments to the Democratic National Committee, 105th Congress, 1st Sess. 272 (Oct. 9, 1997).

<sup>167</sup> Id. at 306–356 (Minority Staff Report entitled Evidence that John Huang Was in New York City on August 15, 16, 17, and 18 (Oct. 9, 1997)).

campaign finance investigation that were unknown to members of the Committee.<sup>168</sup>

At his deposition, Mr. Wang testified that he had power of attorney over the bank account of Daniel Wu, a U.S. green card holder and businessman who resides in Taiwan. According to Mr. Wang, two companies—Ji Tai International and Bao Li Hang International—wrote payroll checks to Mr. Wu each month, which Mr. Wang deposited into Mr. Wu's account. Mr. Wang testified that he then wrote checks back to those companies in the same amounts as the payroll checks.<sup>169</sup> Mr. Wang explained, "The reason being that for immigration purposes, it would show that Mr. Wu was here in the States physically. . . . And on the part of the two companies, it was to show they had an employee on the payroll which might give them a tax credit or a tax break. So it was for tax purposes."<sup>170</sup>

These actions may have violated several federal statutes. If false statements were made to the INS about Mr. Wu's residency, these would appear to violate 18 U.S.C. §§ 1001, 1015. If the two companies named by Mr. Wu evaded or attempted to evade paying taxes, this would appear to violate 26 U.S.C. §§ 7206, 7215. Moreover, if the companies, Mr. Wu, and Mr. Wang conspired to commit these violations, as suggested by Mr. Wang's testimony, this would appear to be an illegal conspiracy under 18 U.S.C. § 371. The result of the grant of immunity is that Mr. Wang cannot be prosecuted for this potentially fraudulent activity, even though it is unrelated to the campaign finance investigation.

#### 4. *The Committee Abused the Contempt Power*

The contempt power is the most potent and rarely invoked authority of Congress. Under this power, Congress can punish an individual for failure to cooperate or comply with a compulsory directive with imprisonment of up to one year.<sup>171</sup>

On August 6, 1998, the Committee voted along party lines (24 to 19) to cite Attorney General Janet Reno for contempt of Congress. As described in detail in the minority views filed with the Committee's contempt report, this action constituted an abuse of the contempt power.<sup>172</sup>

There was no reasonable basis for proceeding with the contempt citation. The Attorney General was cited for contempt because she did not give the Committee two memoranda written by Louis B. Freeh, the Director of the FBI, and Charles G. La Bella, the former head of the Department of Justice's investigative task force on campaign finance. These memoranda contained prosecution recommendations and other sensitive and detailed information regarding the Department's largest ongoing criminal investigation. The Attorney General's refusal to turn over this information was consistent with 100 years of precedent in which both Republican and Democratic administrations have refused to provide Congress with prosecution memoranda in ongoing criminal investigations. The

<sup>168</sup> See letter from Rep. Waxman to Attorney General Janet Reno (Oct. 20, 1997).

<sup>169</sup> Deposition of David Wang, 72-76 (Oct. 6, 1997).

<sup>170</sup> Id. at 94.

<sup>171</sup> 2 U.S.C. §§ 192, 194.

<sup>172</sup> House Committee on Government Reform and Oversight, Contempt of Congress, H. Rpt. No. 105-728, 105th Cong., 2d Sess., 134-135 (1998).

Committee's contempt vote occurred just two days after Director Freeh, Mr. La Bella, and the lead FBI agent in the investigation, James V. Desarno, Jr., testified that releasing the memoranda would provide a "road map" of the investigation to criminal defendants and would be "devastating" to future prosecutions.

The Attorney General made every effort to reach an accommodation with the Committee, including offering to brief the Chairman and Ranking Minority Member on the contents of the memoranda and testify before the full Committee at a public hearing. She requested only that before taking these steps, she be given three weeks to complete her review of the memorandum and make her decisions free of political influence. The Chairman rejected every attempt at accommodation.

The Committee proceeded with the contempt citation in an apparent effort to intimidate the Attorney General. The goal appeared to be to force the Attorney General to choose between seeking the appointment of an independent counsel to investigate the President or going to prison for contempt of Congress. In fact, in a meeting with the Attorney General in his office on July 31, 1998, Chairman Burton explicitly told the Attorney General that he would not insist on seeing the memoranda and would not seek a House vote on contempt if the Attorney General decided to seek appointment of an Independent Counsel.<sup>173</sup> Chairman Burton's spokesman confirmed this when he told the Washington Post, "[T]he only one real objective here is getting an independent counsel. . . . If she follows that advice, there will be no need for the documents."<sup>174</sup> As the Washington Post wrote in an editorial after the Committee vote, "Mr. Burton's approach to the matter has been nothing less than thuggish. . . . [Ms. Reno] is right in her refusal to be bullied."<sup>175</sup>

After the immunity vote, Attorney General Reno continued to make every effort to accommodate Chairman Burton. On August 24, 1998, for example, the Department of Justice offered to conduct a staff briefing on the memoranda for Chairman Burton. Chairman Burton responded that this was a "disingenuous offer."<sup>176</sup> Then, at the suggestion of House Judiciary Committee Chairman Henry Hyde,<sup>177</sup> Attorney General Reno allowed Chairman Burton "and a few other senior lawmakers in the House and Senate . . . to read edited copies of the reports."<sup>178</sup> In a further attempt to reach a compromise, Attorney General Reno agreed to allow a small delegation of Committee members to review the memoranda provided that Chairman Burton withdraw his contempt threat.<sup>179</sup> Chairman Burton refused and proceeded to file the Committee's contempt resolution with the House.<sup>180</sup>

Chairman Burton's efforts to hold the Attorney General in contempt were widely criticized. The following are a few excerpts from newspaper editorials across the country:

<sup>173</sup> Letter from Rep. Waxman to Attorney General Reno (July 31, 1998).

<sup>174</sup> Democrats Say Burton Made Threat Against Reno, Washington Post (Aug. 1, 1998).

<sup>175</sup> Mr. Burton and Ms. Reno, Washington Post (Aug. 7, 1998).

<sup>176</sup> Letter from Chairman Burton to Attorney General Reno (Aug. 24, 1998).

<sup>177</sup> Letter from Chairman Hyde to Attorney General Reno (Aug. 27, 1998).

<sup>178</sup> Lawmaker Seeks Vote on Contempt Resolution Against Reno, New York Times (Sept. 18, 1998).

<sup>179</sup> Id.

<sup>180</sup> Burton Wants House to Find Reno in Contempt, Washington Post (Sept. 18, 1998).

- The Contempt Citation, Washington Post (Sept. 22, 1998): "It is bad enough that Mr. Burton has extorted from the attorney general a look at even an edited version of a prosecutor's thoughts on an ongoing criminal investigation. But his continuing to push this matter after Ms. Reno has obliged him as she has is a gross abuse of his powers as chairman of the committee. . . . [I]t reflects poorly on the leadership that it is even tolerating Mr. Burton's antics."
- Buck Stops With Reno, Los Angeles Times (Aug. 6, 1998): "Congress has no business threatening Reno with contempt charges. . . . [T]he panel should reject the request if Burton insists on putting the issue to a vote today. Better yet would be for Burton to acknowledge the idea is wrongheaded and drop it altogether."
- Tell Him No, Ms. Reno! Don't Yield to Burton, Miami Herald (Aug. 6, 1998): "If you want to rid your house of rats, one extremely effective way is to burn down the house. That's essentially what U.S. Rep. Dan Burton . . . seems willing to do by threatening Attorney General Janet Reno with contempt of Congress. . . . Mr. Burton's request is dangerous. It's more than laced with his palpable political motives. Worse, it's also bereft of any sign that he has weighed what these memos, if leaked, could do to the Department of Justice's own investigation."
- The Foolish Threat Against Reno, Chicago Tribune (Aug. 6, 1998): "Given their professed desire to see that the law is enforced, you would think Burton and his GOP colleagues would be leery of any step that might hinder prosecutors. The threat of contempt citation makes sense only if their real purpose is to embarrass the administration."
- Do It Justice, New York Newsday (Aug. 6, 1998): "[N]obody deserves the kind of treatment Reno has been getting from Rep. Dan Burton. . . . Burton should back off."
- Give Reno Some Room, St. Petersburg Times (Aug. 6, 1998): "The integrity of the investigations is more important than a few congressional Republicans grabbing some headlines. Burton should stop this showboating and follow the lead of his more temperate colleagues."

##### *5. The Committee Abused the Power to Release Documents*

As in the case of subpoena authority, past congressional investigations have prohibited a committee chairman from unilaterally releasing documents. In some investigations, documents could be released only during committee meetings and hearings. In other investigations, documents could not be released without the concurrence of the ranking minority member or a vote of the committee. These procedures provided a minimal check on the power of any individual to release potentially confidential documents.

The resolution authorizing the House Watergate investigation, for example, stated that "[n]o member shall make any of that testimony or those papers or things [obtained by the committee] public



unless authorized by a majority vote of the committee.”<sup>181</sup> The rules of the Senate Whitewater investigation similarly provided that “[n]o member of the special committee or the staff . . . shall disclose . . . any confidential materials or information, unless authorized by the special committee or the chairman in concurrence with the ranking member.”<sup>182</sup> The Iran-Contra investigation rules provided that “[u]nless otherwise directed by the committee, all depositions, affidavits, and other materials received in the investigation shall be considered nonpublic. . . . All such material shall, unless otherwise directed by the committee, be available for use by the members of the select committee in open session.”<sup>183</sup>

These practices notwithstanding, the Committee adopted a document protocol on April 10, 1997, that gave the chairman unilateral “discretion” to release the documents, including privileged and confidential documents, “to the media . . . or to any other person” without the prior consent of the Committee or the ranking minority member.<sup>184</sup> A former Republican staff member called the document protocol “unprecedented.”<sup>185</sup>

The protocol established a working group to advise the chairman in cases where the minority objected to the public release of certain documents. In these situations, “the Chairman shall present the matter to the Working Group for non-binding decision regarding the advisability of the proposed release.”<sup>186</sup> The chairman, however, retained the authority to release these documents without the consent of the minority or the working group.

Chairman Burton and his staff abused this authority to release Committee documents to the press. The most egregious example of Chairman Burton’s unilateral power to release documents was the Chairman’s release of subpoenaed Bureau of Prisons tape recordings of Webster Hubbell’s phone conversations with his wife.<sup>187</sup>

The first release of the Hubbell tapes occurred when the Wall Street Journal was given access to these private telephone calls for an article that was published on March 19, 1998.<sup>188</sup> In a letter to Rep. Waxman, Chairman Burton stated that the tapes were given to the Journal because the tapes “were considered relevant” to the Committee’s investigation.<sup>189</sup> Chairman Burton also acknowledged that he was the source of the release, arguing that the tapes “were entered into the Committee record on December 10, 1997.”<sup>190</sup> These tapes, however, were never publicly released at that hearing or any other,<sup>191</sup> and they did not relate to the campaign finance investigation. The tape described in the Wall Street Journal article concerned what Mrs. Hubbell should cook her family for dinner. The

<sup>181</sup> House Committee on the Judiciary, Procedures for Handling Impeachment Inquiry Material, 93d Cong., 2d Sess. (Feb. 1974).

<sup>182</sup> S. Res. 120, § 6 (May 17, 1995).

<sup>183</sup> House Select Committee to Investigate Covert Arms Transactions with Iran, Rule 7.6, 100th Cong., 1st Sess. (Feb. 1974).

<sup>184</sup> Protocol for Documents, Clause C (Apr. 10, 1997).

<sup>185</sup> Burton’s Proposed Rules on Probe Documents Criticized, National Journal’s Congress Daily (Apr. 3, 1997).

<sup>186</sup> Protocol for Documents, Clause C(b) (Apr. 10, 1997).

<sup>187</sup> Subpoena from House Committee on Government Reform and Oversight to Federal Prison Camp, Cumberland, Maryland (May 8, 1997).

<sup>188</sup> As He Wasted Away, the Prisoner Had But One Thing on His Mind, Wall Street Journal (Mar. 19, 1998).

<sup>189</sup> Letter from Chairman Burton to Rep. Waxman (Mar. 27, 1998).

<sup>190</sup> Id.

<sup>191</sup> See letter from Reps. Waxman and Lantos to Chairman Burton (Apr. 27, 1998).

sole effect of releasing the recordings of these private conversations was to embarrass and demean Mr. Hubbell.

Chairman Burton released additional transcripts of the Hubbell tapes on April 30, 1998. Although the minority objected in advance to this release, Chairman Burton did not even convene the working group to consider the minority's objections in violation of his own document protocol.<sup>192</sup> As discussed above, the transcripts released by Chairman Burton were selectively edited to remove exculpatory passages.

In another example, on February 27, 1998, Chairman Burton released his staff's notes of an interview with Steven Clemons, a former aide to Senator Bingaman, related to Charlie Trie's involvement with a trade commission. Chairman Burton released the notes even though he was forced to cancel a scheduled hearing on the topic after Senate Majority Leader Trent Lott and Minority Leader Tom Daschle objected that Mr. Clemons's testimony would jeopardize the Senate's independence. Not only did the release of the notes disregard the Senate's concerns about Mr. Clemons's testimony,<sup>193</sup> Mr. Clemons himself disputed the accuracy of the staff notes and claimed they did not represent his views.<sup>194</sup>

After months of minority protests about these unilateral powers and the subsequent abuses, Chairman Burton finally agreed to revise the Committee rules and document protocol regarding the release of documents, issuance of subpoenas, and rounds of questioning in depositions.<sup>195</sup> Under the revisions, the Chairman could no longer release documents unilaterally but needed to obtain either the concurrence of the ranking minority member or a vote of the Committee. The new protocol also required the Chairman to notify the minority at least 24 hours before the intended release in order to give the minority adequate opportunity to review the documents and make an objection.<sup>196</sup> These concessions were made only after the minority refused to agree to grant immunity to witnesses without reforms to the Committee's procedures.

At the June 23, 1998, meeting at which the revisions were adopted, Chairman Burton assured the minority that the new rules were "not cosmetic changes."<sup>197</sup> Despite that assurance, Chairman Burton continued to release documents without regard to the new rules. At the August 4, 1998, Committee hearing, Chairman Burton made a motion to release certain documents even though the minority was not notified of the proposed release until after 3:00 p.m. on August 3—less than 24 hours earlier. Furthermore, at no time did Chairman Burton attempt to reach consensus with the minority on the document release.<sup>198</sup>

The Committee also released confidential documents over the objections of law enforcement and other executive agencies. On September 2, 1998, the Committee released the deposition of Larry Wong without first redacting confidential FBI and Commerce Department Inspector General materials included in the deposition

<sup>192</sup> Letter from Rep. Waxman to Chairman Burton (May 3, 1998).

<sup>193</sup> Letter from Rep. Waxman to House Speaker Newt Gingrich (Feb. 27, 1998).

<sup>194</sup> Statement of Steven C. Clemons (Feb. 25, 1998).

<sup>195</sup> Letter from Chairman Burton to Rep. Waxman (June 18, 1998).

<sup>196</sup> Document Protocol, § C.3 (June 23, 1998).

<sup>197</sup> Chairman Burton, Committee Meeting (June 23, 1998).

<sup>198</sup> Letter from Rep. Waxman to Chairman Burton (Aug. 24, 1998).

transcript.<sup>199</sup> The minority was not consulted nor given an opportunity to review the majority's redactions prior to the release.<sup>200</sup> The information included memos written by FBI agents summing up information provided to the FBI from confidential sources and a report by agents in the Commerce Department Inspector General's office summarizing a confidential witness interview in an active investigation. The FBI had requested that "[o]ut of a concern for the privacy interests of those individuals mentioned in these documents and the sensitive nature of the information involved, we request that the Committee confer with us prior to publicly disseminating any of this material."<sup>201</sup> The Commerce Department made a similar request.<sup>202</sup> Nevertheless, the material was included as an exhibit to the deposition and sensitive portions were read into the record and published on the majority's Internet site.

Similarly, the Committee also ignored the Department of Justice's objection to the release of documents relating to travelers checks from Charlie Trie, which were the subject of an ongoing criminal investigation. In a July 30, 1998, letter to Chairman Burton, Deputy Assistant Attorney General Mark M. Richard wrote:

Certain facts surrounding the travelers checks are under active investigation and are crucial to our determination whether additional crimes are charged. The FBI is pursuing leads both here and abroad. Release of the checks now would inevitably compromise our ability to develop new evidence by alerting witnesses and conspirators about the nature and direction of the investigation. (Indeed, because of these concerns the checks have not yet been released to the defendant in the Trie case.)<sup>203</sup>

Despite these concerns, on August 4, 1998, the majority voted at a Committee meeting to release the travelers checks, leading to exactly the type of press coverage that the Justice Department hoped to avoid.<sup>204</sup>

## 6. *The Committee Leaked Confidential Information*

Since the beginning of the campaign finance investigation, the Committee leaked many documents, without regard for the impact of those leaks on the Committee, criminal investigations, or the rights of private citizens.

In November 1996, shortly after Mr. Burton was selected chairman, it was reported that "[o]ne of his top aides improperly leaked the confidential phone logs of former Commerce Department official

<sup>199</sup> Letter from Rep. Waxman to Chairman Burton (Sept. 9, 1998).

<sup>200</sup> *Id.*

<sup>201</sup> Letter from FBI Assistant Director John E. Collingwood to Chairman Burton (Jan. 17, 1998).

<sup>202</sup> Letter from Commerce Department Inspector General Francis D. DeGeorge to Chairman Burton (Sept. 12, 1997).

<sup>203</sup> Letter from Mark M. Richard to Chairman Burton (July 30, 1998).

<sup>204</sup> After the release of the travelers checks, several stories appeared in major newspaper. See Campaign Finance's Parallel Probes, *Washington Post* (Aug. 6, 1998); GOP Probers Report \$50,000 in Illegal Donations Via Trie, *Washington Times* (Aug. 5, 1998); House Committee Threatens Reno, *New York Times* (Aug. 5, 1998); Bank Data Link Trie, Democrats to Foreign \$50,000, *Arkansas Democrat-Gazette* (Aug. 5, 1998); Reno Defies GOP Pressure on Donor Probe, *Los Angeles Times* (Aug. 5, 1998).

John Huang. Burton confirmed . . . that [his aide] had leaked the records to the media.”<sup>205</sup>

Following that incident, two senior majority staff interviewed businesswoman Vivian Mannerud on February 27, 1997, at her place of business and without her counsel present. The staff assured her that her interview would be used only for official business. On April 4, 1997, however, the New York Times, citing “congressional investigators,” published a front-page story about contributions Ms. Mannerud allegedly solicited for Democrats.<sup>206</sup>

Chairman Burton or his staff also appear to have leaked documents subpoenaed by the Committee to the plaintiffs suing the federal government to overturn the Interior Department’s decision to deny a casino application in Hudson, Wisconsin. DNC employee David Mercer testified under oath at his deposition that he was contacted by a Milwaukee reporter and asked about certain documents in the Committee’s possession. When Mr. Mercer asked how the reporter got the documents, the reporter told him that “investigators had released documents from the House committee to lawyers in the litigation, and then the lawyers in the litigation released it to the press.”<sup>207</sup>

In another example, Florida attorney Charles Intriago was deposed by the Committee on February 20, 1998. Mr. Intriago agreed to appear only after being assured by the majority’s chief counsel that the deposition would be taken in executive session and would not be leaked to the press. Despite those assurances, Mr. Intriago was contacted by a reporter for the Miami Herald about the deposition “within an hour of leaving the deposition.”<sup>208</sup>

#### *7. The Committee Excluded the Minority From Witness Interviews*

Prior investigations have followed a bipartisan approach and included the minority in witness interviews. In the 104th Congress, for example, Chairman Hyde specifically provided that all witness interviews conducted by the Select Subcommittee on the United States Role in Iranian Arms Transfers to Croatia and Bosnia be jointly conducted with majority and minority staff.<sup>209</sup> Similar policies were followed during the Watergate, Iran-Contra, Senate Whitewater, and Senate Campaign Finance investigations.<sup>210</sup> In the 105th Congress, the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China chaired by Rep. Christopher Cox followed the same precedent, even hiring a bipartisan investigative staff to conduct interviews.<sup>211</sup>

Chairman Burton rejected minority requests to follow this precedent and conduct joint witness interviews.<sup>212</sup> In fact, the majority did not even give notice to the minority when they planned to conduct interviews. According to Committee activity reports, the majority made at least 50 investigative trips without notice to the mi-

<sup>205</sup> Burton Admits Aide Leaked Huang Record, Roll Call (Nov. 25, 1996).

<sup>206</sup> Letter from Rep. Waxman to Chairman Burton (June 4, 1997).

<sup>207</sup> Deposition of David Mercer, 150 (Aug. 26, 1997).

<sup>208</sup> Letter from Robert Plotkin to majority Chief Counsel Richard Bennett (Feb. 20, 1998).

<sup>209</sup> Letter from Rep. Waxman to Chairman Burton (June 4, 1997).

<sup>210</sup> Id.

<sup>211</sup> Cox Pledges Small Staff Despite Near-Record Budget Authorization, The Hill (July 1, 1998).

<sup>212</sup> Letter from Rep. Waxman to Chairman Burton (June 4, 1997).

nority, including trips to Los Angeles, San Francisco, New York, Chicago, Miami, Orlando, Milwaukee, Detroit, Houston, Little Rock, Oklahoma City, and Columbus.

#### *8. The Committee Violated Its Own Budget Rules*

Finally, the majority even denied the minority a fair allocation of Committee resources. At the beginning of the 104th Congress, House Oversight Chairman Thomas stated, "To ensure fairness to all Members, the Republicans, when they were in the minority, argued that all committees should allocate at least one-third of resources to the minority. As the new majority, Republicans remain committed to achieving that goal."<sup>213</sup> Despite this pledge, the minority received less than 25% of the Committee's budget. In fact, although the Government Reform and Oversight Committee was given the single-largest budget in the House, the Republicans gave the minority the smallest share of any committee in the House.

The Committee's actions also violated Committee rule 18(e), which requires that the Chairman prepare a budget in consultation with the minority. The minority was not consulted on the Committee's budget and, in fact, was not provided a copy of the budget until two weeks after it was submitted to the House Oversight Committee.<sup>214</sup> Chairman Burton also did not consult with the minority on his request for an additional \$1.8 million from the Oversight Committee's reserve fund in 1998.<sup>215</sup>

In another example of budgetary unfairness, the majority rejected the minority's request to hire an outside consultant even after approving four consultant contracts for the majority. The Committee's budget provided funds for both the majority and the minority to retain consultants. The majority used these funds to hire former chief counsel Richard Bennett as well as three other consultants.<sup>216</sup> After the minority raised concerns that, as a consultant, Mr. Bennett would not be required to comply with House ethics rules,<sup>217</sup> Mr. Bennett agreed to "comply with the House's code of official conduct."<sup>218</sup> The majority, however, rejected the minority's request for a consultant even after the proposed consultant provided the Committee with a letter in which it agreed to adhere to the same standards being followed by Mr. Bennett.<sup>219</sup>

#### D. THE COMMITTEE WASTED TAXPAYER DOLLARS

Early in the investigation, the Committee's inflated budget led the Wall Street Journal's Al Hunt to remark, "The biggest losers will be taxpayers. The Burton-led circus . . . could cost between \$6 million and \$12 million."<sup>220</sup> Unfortunately, Mr. Hunt's prediction

<sup>213</sup> Committee on House Oversight's Funding Resolution Report for the 104th Congress, Rpt. 104-74, 7.

<sup>214</sup> Letter from Rep. Waxman to Chairman Burton (Feb. 26, 1997); Letter from Rep. Waxman to Chairman Thomas and Rep. Gejdenson (Feb. 28, 1997).

<sup>215</sup> Letter from Rep. Waxman to Chairman Thomas and Rep. Gejdenson (Feb. 3, 1998).

<sup>216</sup> The three consultants hired for the investigation were Charles Little, Phillip Larsen, and Ward Warren.

<sup>217</sup> Letter from Rep. Waxman to Chairman Burton (Aug. 28, 1998).

<sup>218</sup> Letter from Richard Bennett to Chairman Burton (Sept. 4, 1998).

<sup>219</sup> Committee Meeting (Sept. 24, 1998).

<sup>220</sup> Albert R. Hunt, *The Witch Hunt in the House*, Wall Street Journal (Apr. 10, 1997).

appears to have come true. The minority estimates that the cost of the investigation has already surpassed \$7.4 million.

*1. The Committee Has the Largest Budget of Any Committee in the History of Congress*

Chairman Burton's original budget request for the Committee for the 105th Congress was \$16.2 million. He then called this budget request "totally inadequate" to conduct the campaign finance investigation,<sup>221</sup> prompting the House to approve a \$3.8 million supplemental appropriation for the investigation for 1997.<sup>222</sup> The result was an overall budget for the Committee of \$20 million.<sup>223</sup> This was an increase of \$6.5 million—nearly 50%—from the Committee's budget in the 104th Congress.

In 1998, Chairman Burton requested additional funds from the House "reserve" fund to continue the investigation. He received \$1.8 million from this fund for the investigation<sup>224</sup> and an additional \$1.15 million from the reserve fund to fund the newly created Census Subcommittee for 11 months.<sup>225</sup> This brought the total budget for the Committee for the 105th Congress to \$23 million.

This budget was nearly ten times larger than the \$2.4 million budget the Republican leadership gave to the House Committee on Standards of Official Conduct (the "Ethics Committee") to investigate misconduct by members.<sup>226</sup> It was also 50% larger than the \$14.6 million budget for the House Commerce Committee, which had the second largest committee budget in the House.<sup>227</sup>

*2. The Committee Spent Over \$7.4 Million on the Campaign Finance Investigation*

The minority estimates that the House Government Reform and Oversight Committee's campaign finance investigation has cost the taxpayers in excess of \$7.4 million through August 31, 1998.

The minority's estimate is based on a review of expenses associated with the investigation reported in the House Chief Administrative Officer's reports and the Committee's monthly activity reports for the 105th Congress.<sup>228</sup> The minority staff estimates that the Committee spent over \$5.7 million in taxpayer dollars on staff salaries and overtime; over \$120,000 on domestic travel; and over \$80,000 for foreign travel paid for by the State Department. The Committee transcribed over 24,000 pages of testimony and statements taken in depositions, hearings, and meetings at an estimated cost to the taxpayer of \$70,000 to \$140,000 and spent over \$300,000 paid for by the Government Printing Office to reproduce this material for public distribution. Some of the other categories of Committee expenses estimated by the minority staff include expenses for consultants (over \$200,000); executive agency personnel

<sup>221</sup> Burton: Democrats Won't Get One-Third of Budget for Probe, CQ Monitor (Feb. 27, 1997).

<sup>222</sup> H. Res. 91 (Mar. 21, 1997).

<sup>223</sup> Id.

<sup>224</sup> Dems Blast GOP Over Expansion of Clinton Probe, Roll Call (Mar. 26, 1998).

<sup>225</sup> Approved by the Committee on House Oversight on Feb. 24, 1998.

<sup>226</sup> H. Res. 62 (Feb. 13, 1997).

<sup>227</sup> H. Res. 74 (Feb. 25, 1997).

<sup>228</sup> House CAO reports were received through June 1998; Committee activities reports were reviewed through August 1998.

detailed to the investigation (over \$100,000); and equipment and supplies (over \$500,000).

The majority disputed previous minority staff estimates of the cost of the investigation. On May 11, 1998, after several requests from minority members to account for the Committee's expenses, Chairman Burton wrote Rep. Waxman that the Committee spent less than \$2.5 million on the investigation in 1997.<sup>229</sup> Chairman Burton's figures, however, were substantially understated. According to a Roll Call analysis published in July 1998, "Chairman Dan Burton's (R-Ind.) staff provided numbers that do not accurately reflect the actual cost of his investigation into fundraising abuses. . . . Burton does not include the salaries and expenses for investigators . . . who spent virtually all of their time on the investigation but were paid with money from the committee's general budget."<sup>230</sup> Chairman Burton's figures also excluded the costs of transcribing Committee depositions, hearings, and meetings; GPO printing costs; and the cost of foreign travel. The Roll Call analysis found that "the actual number is much closer to the Democrats' figure."<sup>231</sup>

### 3. *The Investigation is the Most Expensive and Least Productive Congressional Investigation in History*

Chairman Burton's campaign finance investigation has been the most expensive congressional investigation in history. The costs of this investigation far exceed the \$1.9 million spent on the Senate Whitewater investigation and the \$5 million spent on the House and Senate Iran-Contra investigations. They also exceed the \$7 million spent on the Senate Watergate investigation. These figures are adjusted for inflation.<sup>232</sup>

The Republican leadership even devoted more resources to the Burton investigation than it allocated to the Federal Election Commission for compliance and enforcement of federal election law. The FEC enforcement staff consists of 24 staff attorneys, 12 paralegals, and 2 investigators. Even including the FEC General Counsel and 5 Assistant General Counsels, who spend a portion of their time supervising enforcement actions, the FEC enforcement division has a staff of only 43.<sup>233</sup> This is significantly fewer than the estimated 50 majority staff and 19 minority staff actually working on the Burton investigation at any given time.

The investigation also was far less productive than these other investigations. The Senate Whitewater investigation held 66 days of public hearings, the Iran-Contra investigation held 40 days of public hearings, and the Senate Watergate investigation held 53 days of public hearings.<sup>234</sup> The Senate Governmental Affairs Committee campaign finance investigation held 33 days of hearings and published a 1,100-page report while spending less than \$3.5 mil-

<sup>229</sup> Letter from Chairman Burton to Rep. Waxman (May 11, 1998).

<sup>230</sup> Democrats' Report Doesn't Add Up; Republican Numbers Aren't Any More Precise, Roll Call (July 13, 1998).

<sup>231</sup> Id.

<sup>232</sup> Whitewater: Comparison of Cost and Other Selected Data with Previous Investigations, CRS Report for Congress (Feb. 9, 1998) (98-101 GOV).

<sup>233</sup> House Committee on Government Reform and Oversight, Hearings on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess. (Mar. 31, 1998).

<sup>234</sup> Id.

lion.<sup>235</sup> On the other hand, as reported in the Wall Street Journal, the Committee's investigation "conducted just a handful of hearings that disclosed no major new evidence."<sup>236</sup> It held only nine public hearings over 15 days.<sup>237</sup> In fact, in 1998, the Committee did not hold a single day of investigative hearings on the role of foreign contributions in the 1996 campaign, which was supposed to be the primary focus of the investigation. Even Republicans commented on the Committee's lack of productivity. One senior Republican leadership aide observed, "It's been very expensive, and it hasn't amounted to much."<sup>238</sup>

#### 4. *The Investigation Squandered Taxpayer Dollars*

Not only did the Committee receive an enormous budget for the investigation, the Committee squandered this money in a wasteful fashion with no accountability to the taxpayers. For example, in early March 1997, the minority learned that the majority was planning to spend thousands of dollars to create a computer database for the storage of the hundreds of thousands of pages of documents obtained by the Committee over the course of the investigation. The minority requested that this database be shared, as has been the practice in other major investigations such as Watergate and Iran-Contra.<sup>239</sup> This would allow both the majority and the minority to search and retrieve documents, and create a common index for use during hearings. Chairman Burton rejected the minority's proposal to share the database, forcing the minority to waste thousands of dollars on duplicate systems.<sup>240</sup> The original estimate for the cost of the majority's database was \$40,000; it is now estimated to have cost the taxpayers \$60,000.<sup>241</sup>

In another example of waste, the Committee took two trips to Asia at a very high cost and with no benefit. In December 1997, the Committee sent four staff members to Asia for a 19-day investigative trip. In total, the staff spent only two days investigating in Thailand, only three days in Indonesia, and only an hour in Singapore. The investigation consisted of eight interviews in Bang-

<sup>235</sup> Senate Report, v. 6, 8687.

<sup>236</sup> Burton's Campaign-Finance Probe Is Drawing Criticism for Mounting Costs and Slow Progress, Wall Street Journal (Mar. 27, 1998).

<sup>237</sup> House Committee on Government Reform and Oversight, Hearings on Campaign Finance Improprieties and Possible Violations of Law, 105th Cong., 1st Sess., 7 (Oct. 8, 1997); House Committee on Government Reform and Oversight, Hearings on Conduit Payments to the Democratic National Committee, 105th Cong., 1st Sess. (Oct. 9, 1997); House Committee on Government Reform and Oversight, Hearings on White House Compliance with Committee Subpoenas, 204 (Nov. 6, 7, 1997); House Committee on Government Reform and Oversight, Hearings on Johnny Chung: His Unusual Access to the White House, His Political Donations and Related Matters, 105th Cong., 1st Sess., 89 (Nov. 13, 14, 1997); House Committee on Government Reform and Oversight, Current Implementation of the Independent Counsel Act, 105th Cong., 1st Sess. (Dec. 9, 10, 1997); House Committee on Government Reform and Oversight, Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Application, 105th Cong., 2d Sess., v. 1 (Jan. 21, 22, 28, 29, 1998); House Committee on Government Reform and Oversight, Hearing on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess., 108-109 (Mar. 31, 1998); House Committee on Government Reform and Oversight, Hearing on Venezuelan Money and the Presidential Election, 105th Cong., 2d Sess. (Apr. 30, 1998); House Committee on Government Reform and Oversight, Hearing on the Need for an Independent Counsel in the Campaign Finance Investigation, 105th Cong., 2d Sess., 66-67 (Aug. 4, 1998).

<sup>238</sup> Burton's Request for Funds Stalls as Investigation Fatigue Hits GOP, CQ's Inside Congress (Mar. 21, 1998).

<sup>239</sup> See Senate Report, v. 6, 8687 (1998).

<sup>240</sup> Letter from Rep. Waxman to Chairman Burton (May 15, 1997).

<sup>241</sup> Letter from Rep. Waxman to Chairman Burton (May 15, 1997); Gingrich, Hyde Will Tap Clinton Scandal Database, Roll Call (Mar. 23, 1998).



kok, four interviews in Jakarta, and “observing” a private residence in Jakarta and an office building in Singapore. The trip was carelessly planned to coincide with two national holidays in Thailand and five weekend days. It is estimated that this trip alone cost the taxpayers over \$40,000.

Despite this experience, the majority conducted another foreign trip to Asia in March 1998. This trip was equally wasteful and resulted in no new information. The 15-day trip included 2 days in Singapore with 4 interviews, and 7 days in Taiwan with 7 interviews. In the *Wall Street Journal*, Chairman Burton’s staff director justified the trip by stating, “Not every trip is going to be productive, but you don’t know until you try.”<sup>242</sup>

The majority also insisted on sending senior staff to Florida to retrieve a computer disk that could have been mailed to the Committee for the cost of first-class postage.<sup>243</sup> On June 23, 1997, the Committee sent three staff members (including the majority chief investigative counsel) to Miami to retrieve a computer disk that was alleged to contain information relevant to the Committee’s investigation. This two-day trip wasted thousands of dollars and a total of six working days of staff time. The disk ultimately provided the Committee with little useful information.

The Committee’s frivolous expenses were also exemplified by Chairman Burton’s “wall of shame.” At the April 23, 1998, Committee meeting, Chairman Burton unveiled a “mock stone wall measuring six feet by 20 feet.”<sup>244</sup> Attached to the corkboard were “big glossy shots of Democratic contributors . . . and a special spot for the biggest photo, a picture of President Clinton.”<sup>245</sup> Rep. Robert Wise observed, “When I visit my children’s school, I see things like this up on the wall. It’s childish and unprofessional for this committee.”<sup>246</sup> According to one journalist, “in the light of day, it seemed more like something from an Ed Wood set.”<sup>247</sup> Despite requests from the Committee’s minority members, Chairman Burton refused to disclose the cost of the collage.<sup>248</sup>

### 5. *The Investigation Duplicated the Senate Investigation*

Since the beginning of the campaign finance controversy, minority Committee members have supported efforts to conduct one coordinated congressional inquiry, rather than the two duplicative investigations actually conducted by the House Government Reform and Oversight Committee and the Senate Governmental Affairs Committee. In an op-ed published in the *New York Times* on February 28, 1997, Rep. Waxman noted, “This waste of tax dollars makes no sense—identical multimillion-dollar Senate and House investigations are redundant. They should be merged into one comprehensive effort.”<sup>249</sup>

<sup>242</sup> Burton’s Campaign-Finance Probe is Drawing Criticism for Mounting Costs and Slow Progress, *Wall Street Journal* (Mar. 27, 1998).

<sup>243</sup> Letter from Rep. Waxman to Speaker Gingrich (July 7, 1997).

<sup>244</sup> David Grann, *Housebroken*, *The New Republic* (May 18, 1998).

<sup>245</sup> *Id.*

<sup>246</sup> Angry House Democrats Derail GOP Donor Probe Tactic, *Los Angeles Times* (Apr. 24, 1998).

<sup>247</sup> David Grann, *Housebroken*, *The New Republic* (May 18, 1998).

<sup>248</sup> See House Committee on Government Reform and Oversight, *Business Meeting* (May 13, 1998).

<sup>249</sup> Rep. Waxman, *Campaign Reform Made Whole*, *New York Times* (Feb. 28, 1997).

Similarly, on March 6, 1997, over 100 minority members, led by Reps. Gary Condit, Ed Towns, and John Tierney wrote Speaker Gingrich to request one consolidated investigation.<sup>250</sup> The letter stated:

We support a thorough and comprehensive investigation into all alleged campaign finance abuses. But it makes no sense to direct multiple congressional committees to investigate the very same alleged abuses. Multiple investigations are duplicative and wasteful. . . . To avoid this needless waste of taxpayer dollars, the congressional investigation into alleged campaign finance abuses should be consolidated into one thorough investigation.<sup>251</sup>

Six months later, Rep. Waxman again asked Speaker Gingrich to avoid redundant investigations. In a July 7, 1997, letter, Rep. Waxman wrote that since the "Committee is doing nothing more than duplicating the Senate's work, I believe the House should defer to Senator Thompson . . . instead of wasting millions of taxpayer dollars on an identical but mistake-plagued House investigation."<sup>252</sup>

Speaker Gingrich never responded to either of these letters. Instead, the Committee continued to spend millions of dollars duplicating the work of the Senate investigation. Chairman Burton issued 307 document subpoenas to individuals or entities that were subpoenaed by the Senate.<sup>253</sup> Similarly, the Committee deposed 44 witnesses who were deposed by the Senate.<sup>254</sup> In total, almost one-half of the document subpoenas issued by Chairman Burton and one-quarter of the depositions taken by the Committee duplicated the subpoenas and depositions in the Senate campaign finance investigation. Furthermore, the Committee's hearings on conduit contributions, White House compliance with Committee subpoenas, and the Interior Department's decision to deny the Hudson casino application duplicated hearings already held by the Senate.<sup>255</sup>

Chairman Burton and other majority members were concerned about the cost of this duplication to the taxpayers when the allegations involved Republican campaign finance abuses, however.<sup>256</sup> At the October 8, 1998, Committee meeting, for example, Chairman

<sup>250</sup> Letter from Rep. Gephardt, et al. to Speaker Gingrich (Mar. 6, 1997).

<sup>251</sup> Id.

<sup>252</sup> Letter from Rep. Waxman to Speaker Gingrich (July 7, 1997).

<sup>253</sup> List of Senate subpoenas provided by Senate Governmental Affairs Committee.

<sup>254</sup> List of Senate depositions provided by the Senate Governmental Affairs Committee. At one point during the investigation, Rep. Gary Condit offered an amendment to the Committee rules that would have required the Chairman to consult with the chairman of the Senate Governmental Affairs Committee to attempt to avoid duplication of depositions. The amendment was defeated. Congressional Record, H4094 (June 20, 1997).

<sup>255</sup> On Oct. 9, 1997, the Committee held hearings on conduit contributions made to the DNC by Charlie Trie. House Committee on Government Reform and Oversight, Hearings on Conduit Payments to the Democratic National Committee, 105th Cong., 1st Sess. (Oct. 9, 1997). This hearing covered the same issues examined in a Senate Governmental Affairs Committee hearing on July 29, 1997. On Nov. 6 and 7, 1997, the Committee held hearings on White House compliance with congressional subpoenas, including the delayed production of videotapes of fundraising events. House Committee on Government Reform and Oversight, Hearings on White House Compliance With Committee Subpoenas, 105th Cong., 1st Sess., 163 (Nov. 6, 7, 1997). These hearings covered the same issues covered in a Senate Governmental Affairs Committee hearing on Oct. 23, 1997. Similarly, on Jan. 21, 22, 28, 29, 1998, the Committee held hearings on the Department of the Interior's decision to deny an application for an off-reservation Indian Casino in Hudson, Wisconsin. House Committee on Government Reform and Oversight, Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Applications, 105th Cong., 2d Sess., v. 1 (Jan. 21, 22, 28, 29, 1998). This same issue was examined in a Senate Governmental Affairs Committee hearing on Oct. 30, 1997.

<sup>256</sup> These allegations are discussed in detail in Part IV of this report.

Burton said that the Committee did not investigate allegations of Republican fundraising abuses related to Triad Management Services because “[i]t was thoroughly investigated by the Senate . . . and there was no need to duplicate their efforts.”<sup>257</sup> Not only was this another example of a double standard, Chairman Burton’s statement was also factually inaccurate. As described in Part IV, the Senate investigation into Triad was thwarted by Triad’s lack of cooperation.

#### *6. The Investigation Duplicated Other House Investigations*

In addition to duplicating the Senate’s investigation, the Committee duplicated other House investigations. At least 14 other House committees investigated campaign finance issues in the 105th Congress. These committees were: Committee on Appropriations; Committee on Banking and Financial Services; Committee on the Budget; Committee on Commerce; Committee on House Oversight; Committee on International Relations; Committee on the Judiciary; Committee on National Security; Committee on Resources; Committee on Rules; Committee on Small Business; Committee on Standards of Official Conduct (“Ethics Committee”); Committee on Ways and Means; and the Permanent Select Committee on Intelligence.<sup>258</sup>

The Committee’s investigation often simply replicated work being done by these other committees. For example, the Committee duplicated much of the investigation being conducted by the House Education and the Workforce Committee into the nullified Teamsters elections. Chairman Burton subpoenaed the International Brotherhood of Teamsters, the Ron Carey campaign, and Citizen Action for information related to the union election even though the Education and the Workforce Committee had retained outside counsel and held hearings on that issue.<sup>259</sup>

The Committee also duplicated the House Resources Committee’s investigation into the Interior Department’s decision to deny the Hudson casino application. On December 18, 1997, the Resources Committee issued a subpoena to the Democratic National Committee for all records relating to the Hudson casino. This Committee then issued six subpoenas on the same matter.<sup>260</sup>

The full Committee even duplicated the investigations of its own subcommittees. On March 5, 1998, Government Information, Management, and Technology Subcommittee Chairman Steve Horn held a Federal Election Commission oversight hearing. The Subcommittee heard testimony from Lawrence Noble, the FEC general counsel, who was questioned in detail about the FEC’s decision not to take action against DNC contributor Howard Glick. Mr. Noble

<sup>257</sup> Chairman Dan Burton, House Committee on Government Reform and Oversight, Business Meeting (Oct. 8, 1998).

<sup>258</sup> Federal agencies reported to the GAO that they received campaign finance inquiries from these committees. See Committee on Government Reform and Oversight, Minority Staff Report, *The Cost of Congressional Campaign Finance Investigations to the U.S. Taxpayers* (Oct. 7, 1998).

<sup>259</sup> Subpoenas from the Government Reform and Oversight Committee to: the International Brotherhood of Teamsters (Oct. 23, 1997); the Ron Carey Campaign (Oct. 23, 1997); Citizen Action (Nov. 12, 1997).

<sup>260</sup> Subpoenas from House Government Reform and Oversight Committee to: White House (Aug. 21, 1997); Patrick O’Connor (Oct. 27, 1997); O’Connor & Hannan (Oct. 27, 1997); Franklin Ducheneaux (Oct. 27, 1997); Ducheneaux, Taylor & Associates (Oct. 27, 1997); and the Department of the Interior (Dec. 12, 1997).

answered these questions fully and explained the FEC's decision thoroughly.<sup>261</sup> Despite this testimony, Chairman Burton scheduled a full Committee hearing on the same issue for March 31, 1998. The primary witness was Mr. Noble, who was asked identical questions to those posed at the Subcommittee hearing.<sup>262</sup>

In another example of the intra-Committee duplication, the full Committee and the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs both issued requests for identical information from the DNC.<sup>263</sup> For example, on February 2, 1998, Rep. McIntosh, the Subcommittee chairman, issued a formal document request to the DNC for "all computer entries from the computer files of Ann Brazier reflecting DNC-Finance sponsored coffees" even though Chairman Burton had subpoenaed "[a]ll records relating to the meetings generally known as White House coffees" less than a year earlier.<sup>264</sup>

#### *7. The Investigation Imposed Large Costs on Federal Agencies*

The congressional investigations into campaign finance abuses have placed a heavy burden on the federal government. In an effort to determine the costs and burdens of the campaign finance investigation, Rep. Henry Waxman and Rep. Gary Condit asked the General Accounting Office to conduct a survey of the executive agencies.<sup>265</sup> The request asked GAO to "identify the number of Congressional inquiries made and the related costs incurred by those agencies."<sup>266</sup>

The GAO survey asked 148 executive agencies to provide information on campaign finance inquiries received from October 1, 1996—the time the first allegations of campaign finance abuses arose—through March 31, 1998.<sup>267</sup> The agencies were asked the following questions about the congressional campaign finance requests: how many written inquiries were received from Congress; how many agency officials testified before Congress; how many additional oral communications the agency had with Congress; actual or estimated personnel costs associated with responding to the congressional inquiries; actual or estimated pages of documents submitted in response to the congressional inquiries and the reproduction and delivery costs; the cost of any outside contractors used to respond to the congressional inquiries; and to what extent the agency encountered duplication among the congressional requests. The survey also gave the agencies the opportunity to describe any problems or other comments regarding the inquiries.

GAO found that 21 executive agencies reported receiving 1,156 campaign finance inquiries from Congress during those 18

<sup>261</sup> Subcommittee on Government Management, Information, and Technology, Hearings on Oversight of the Federal Election Commission, 105th Cong., 2d Sess. (Mar. 5, 1998).

<sup>262</sup> House Committee on Government Reform and Oversight, Hearings on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess., 108–109 (Mar. 31, 1998).

<sup>263</sup> Subpoena from House Committee on Government Reform and Oversight to the DNC (Mar. 4, 1997); Letter from Rep. McIntosh to Judah Best (Feb. 2, 1998).

<sup>264</sup> Letter from Rep. McIntosh to Judah Best (Feb. 2, 1998); Subpoena from House Committee on Government Reform and Oversight to the DNC (Mar. 4, 1997).

<sup>265</sup> Letter from Reps. Henry Waxman and Gary Condit to Acting Comptroller General of the United States James F. Hinchman (Feb. 3, 1998).

<sup>266</sup> *Id.*

<sup>267</sup> GAO Survey of Executive Branch Cost to Respond to Congressional Campaign Finance Inquiries (June 23, 1998).

months.<sup>268</sup> This means that federal agencies received, on average, three congressional inquiries each working day during the period surveyed by GAO. The costs of responding to these requests reported by the agencies totaled \$8,767,753.36.<sup>269</sup>

The actual costs, however, are likely to be even higher than the figure reported by GAO, because the GAO figure does not include costs incurred for requests received after March 31, 1998, and does not include various personnel costs, document reproduction costs, or delivery costs not reported by certain agencies.<sup>270</sup> The minority staff analyzed the responses to the GAO survey filed by the federal agencies. These responses showed that (1) the federal agencies spent over 150,000 hours responding to congressional campaign finance inquiries; (2) the federal agencies provided over 2.1 million pages of documents to Congress in response to these inquiries; and (3) 18 of the 21 agencies reported that the congressional inquiries were duplicative.<sup>271</sup>

#### 8. *The Total Costs to the Taxpayer from Congressional Campaign Finance Investigations Exceed \$23 Million*

The Government Reform and Oversight Committee minority staff estimates that the cost to taxpayers of the congressional campaign finance investigations conducted during the 105th Congress totals more than \$23 million. As noted above, according to GAO, federal agencies reported spending at least \$8.7 million responding to congressional inquiries for information related to campaign finance.<sup>272</sup> In addition to these federal agency costs, the minority staff estimates that Congress has spent at least \$14.6 million conducting multiple campaign finance investigations. This includes this Committee's \$7.4 million investigation<sup>273</sup> and the Senate Governmental Affairs Committee's \$3.5 million campaign finance investigation.<sup>274</sup> The House also authorized \$1.2 million for the Education and the Workforce Committee's inquiry into campaign finance abuses related to the Teamsters<sup>275</sup> and \$2.5 million for a select committee to investigate allegations that the Clinton administration gave missile technology to China in exchange for campaign contributions.<sup>276</sup>

As noted above, these four congressional committees—the House Government Reform Committee, the Senate Governmental Affairs Committee, the House Education and the Workforce Committee, and the Select Committee on U.S. National Security and Military/

<sup>268</sup> Letter from Associate Director, Audit Oversight and Liaison, Theodore C. Barreaux to Rep. Waxman and Rep. Condit (Sept. 29, 1998).

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* at Enclosure 1 (footnotes). For example, the Department of Energy, which received 47 congressional requests and produced 43,340 pages of documents, did not provide GAO with personnel costs, document reproduction costs, or document delivery costs related to those requests. Similarly, the State Department, which reported spending 3,386 hours responding to 65 requests, did not provide GAO with its personnel costs.

<sup>271</sup> Minority Staff Report, Committee on Government Reform and Oversight, *The Cost of Congressional Campaign Finance Investigations to the U.S. Taxpayer* (Oct. 7, 1998).

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> Burton's Campaign-Finance Probe Is Drawing Criticism for Mounting Costs and Slow Progress, *Wall Street Journal* (Mar. 27, 1998).

<sup>275</sup> The House Oversight Committee appropriated \$747,274.75 at the Mar. 4, 1998, committee meeting and an additional \$296,543 at the Oct. 2, 1998, committee meeting. The Education and the Workforce Committee also approved a \$150,000 consultant contract for outside counsel for the Teamsters investigation out of the committee's regular budget. Leaders Seek Subpoena Power for Investigation of Teamsters, *Roll Call* (Mar. 23, 1998).

<sup>276</sup> H. Res. 463 (June 18, 1998).

Commercial Concerns with the People's Republic of China—are not the only congressional committees that have investigated alleged campaign finance abuses in the 105th Congress. This report, however, does not estimate the cost to the taxpayers of the investigations by the other committees. If these additional costs were included, the total congressional costs would undoubtedly far exceed \$14.6 million and the total cost to taxpayers would far exceed \$23 million.

9. *The Investigation Imposed Large Costs on the DNC and Other Private Parties*

The Committee's investigation also imposed large and unnecessary costs on private parties, including individual citizens. One of the main targets of the investigation was the DNC. In total, Chairman Burton issued 18 information requests to the DNC, including six subpoenas, ten document requests, and two sets of interrogatories in connection with the campaign finance investigation.<sup>277</sup> The Committee also deposed 23 DNC employees and heard public testimony from one other DNC employee.

According to attorneys for the DNC, in order to comply with the Committee's subpoenas, the DNC was forced to use 22 employees, including 10 attorneys, solely to search and prepare documents for production. The DNC estimates that it had to search nearly 10 million pages of materials to find responsive documents. The DNC produced over 600,000 pages of documents at a cost of more than \$6.1 million to this Committee. The DNC also incurred \$8.8 million in legal fees.<sup>278</sup> Thus, the total cost to the DNC was nearly \$15 million.

The investigation also imposed substantial and unnecessary costs on private businesses. For example, CommerceCorp—a small business with just a few employees headed by former White House aide Mark Middleton—spent approximately \$100,000 and 3½ full days going through documents to comply with the Committee's subpoena. According to one of the company's employees, the cost of the investigation put the company's future in jeopardy.<sup>279</sup> PRC, Inc., which was under contract with the White House to provide computer services, spent more money responding to document requests and attending depositions related to the WhoDB investigation than it did fulfilling the terms of its White House contract.<sup>280</sup>

The greatest costs were often borne by individuals. Maggie Williams, for example, the former chief of staff to the First Lady, incurred over \$350,000 in legal fees in connection with the congressional investigations.<sup>281</sup>

<sup>277</sup> See, e.g., Subpoenas from House Committee on Government Reform and Oversight to the DNC (Mar. 4, 1997; Aug. 22, 1997; Sept. 17, 1997; Jan. 22, 1998; and Mar. 12, 1998).

<sup>278</sup> Minority staff phone interview of Paul Palmer, Debevoise & Plimpton (Sept. 23, 1998).

<sup>279</sup> Minority staff conversation with Robert Luskin, attorney for CommerceCorp employee Holli Weymouth (July 1997).

<sup>280</sup> Deposition of Donald Upson, 61 (Aug. 7, 1997).

<sup>281</sup> In the Loop, Washington Post (July 13, 1998).

## E. THE INVESTIGATION WAS WIDELY CRITICIZED

1. *The Views of Editorial Boards*

Over the past 20 months, Chairman Burton's actions have undercut the credibility of the Committee's campaign finance investigation. As a result of these actions, editorial boards around the country have concluded that Chairman Burton's investigation lost all credibility.

In total, at least 40 newspapers have criticized the Committee's investigation in over 60 editorials. The editorials include the following:<sup>282</sup>

- "Ethically Compromised Inquisitor"<sup>283</sup>
- "Reining In Dan Burton"<sup>284</sup>
- "Mr. Burton Should Step Aside"<sup>285</sup>
- "Millstone of Partisanship; House's Campaign Finance Inquiry Appears Short on Credibility"<sup>286</sup>
- "A House Investigation Travesty"<sup>287</sup>
- "A Chairman Without Credibility"<sup>288</sup>
- "A Disintegrating House Inquiry"<sup>289</sup>
- "Reno Roast Embarrasses Nobody But Congress; Grilling Of Attorney General Is A Sorry Partisan Spectacle"<sup>290</sup>
- "Soap Opera"<sup>291</sup>
- "A Chairman Out of Control"<sup>292</sup>
- "Dan, Go to Your Room"<sup>293</sup>
- "Burton's Vendetta"<sup>294</sup>
- "Dan Burton Is a Loose Cannon"<sup>295</sup>
- "Abuse of Privacy; Burton Should Be Censured"<sup>296</sup>
- "Rep. Burton Goes Too Far"<sup>297</sup>
- "Congressman Plays Dirty with Tapes"<sup>298</sup>
- "The Hubbell Tapes; What Is Dan Burton Thinking?"<sup>299</sup>
- "Clinton's Foes Bungle Again"<sup>300</sup>
- "Give Dan Burton the Gate"<sup>301</sup>
- "Headcase"<sup>302</sup>
- "Wild Card: Chairman's Rampage Demeans Entire House"<sup>303</sup>
- "Burton Bumbles In Bad Faith"<sup>304</sup>
- "Remove Burton from Money Probe"<sup>305</sup>

<sup>282</sup> These editorials are attached to this report as Exhibit 3.

<sup>283</sup> Hartford Courant (Mar. 11, 1997).

<sup>284</sup> New York Times (Mar. 20, 1997).

<sup>285</sup> Washington Post (Mar. 20, 1997).

<sup>286</sup> Los Angeles Times (Apr. 11, 1997).

<sup>287</sup> New York Times (Apr. 12, 1997).

<sup>288</sup> San Francisco Chronicle (Apr. 14, 1997).

<sup>289</sup> New York Times (July 12, 1997).

<sup>290</sup> Los Angeles Times (Dec. 10, 1997).

<sup>291</sup> Roll Call (Apr. 27, 1998).

<sup>292</sup> The Hill (Apr. 29, 1998).

<sup>293</sup> Boston Herald (May 5, 1998).

<sup>294</sup> Boston Globe (May 5, 1998).

<sup>295</sup> Hartford Courant (May 5, 1998).

<sup>296</sup> Harrisburg Patriot-News (May 5, 1998).

<sup>297</sup> Times Union (Albany, New York) (May 5, 1998).

<sup>298</sup> Allentown Morning Call (May 5, 1998).

<sup>299</sup> Minneapolis Star Tribune (May 5, 1998).

<sup>300</sup> Atlanta Constitution (May 5, 1998).

<sup>301</sup> Chicago Tribune (May 6, 1998).

<sup>302</sup> New York Daily News (May 6, 1998).

<sup>303</sup> Fayetteville Observer-Times (May 6, 1998).

<sup>304</sup> San Antonio Express-News (May 6, 1998).

<sup>305</sup> Seattle Post-Intelligencer (May 7, 1998).

“The Dan Burton Problem”<sup>306</sup>  
 “Out of Control”<sup>307</sup>  
 “Burton Unfit to Lead Clinton Probe”<sup>308</sup>  
 “Mistakes Were Made: Burton Inquiry Can’t Reach a Credible Conclusion”<sup>309</sup>

## 2. *The Views of Columnists and Commentators*

Columnists and commentators have been equally critical of Chairman Burton’s investigation. The columns include the following:<sup>310</sup>

“The Wrong Man for a Sensitive Job”<sup>311</sup>  
 “The Witch Hunt in the House”<sup>312</sup>  
 “A Wacky Politico Invades Privacy to Get at Clinton”<sup>313</sup>  
 “An Abuse of Power”<sup>314</sup>  
 “Slime on the Right”<sup>315</sup>  
 “House Probe of Campaign Fund-Raising Uncovers Little, Piles Up Partisan Ill Will”<sup>316</sup>  
 “Rules of Congress, Truth Be Damned”<sup>317</sup>  
 “It’s Time to Say, ‘Bye-Bye, Rep. Burton’”<sup>318</sup>  
 “He Takes a Cue from McCarthy”<sup>319</sup>  
 “The Republicans’ Loose Cannon”<sup>320</sup>  
 “Accuser Caught In His Own Trap”<sup>321</sup>  
 “You Want a Non-Partisan Investigation? Don’t Get Burton”<sup>322</sup>  
 “Another Bump In Burton Panel’s Road”<sup>323</sup>  
 “Housebroken”<sup>324</sup>

## II. THE MAJORITY REPEATEDLY MADE SENSATIONAL ALLEGATIONS THAT WERE FALSE OR UNSUBSTANTIATED

On February 25, 1997, at the outset of the Committee’s investigation, Chairman Burton appeared on national television to discuss the Committee’s campaign finance investigation. During the interview, he noted that “this thing could end up being much bigger than Watergate ever was.”<sup>325</sup> He reiterated this allegation to the Washington Post a few weeks later, stating: “This could end up being a Watergate type of thing. . . . This is big, big stuff. Every day it’s getting bigger and bigger.”<sup>326</sup>

<sup>306</sup> New York Times (May 8, 1998).

<sup>307</sup> Roll Call (May 7, 1998).

<sup>308</sup> Milwaukee Journal-Sentinel (May 9, 1998).

<sup>309</sup> Sacramento Bee (May 11, 1998).

<sup>310</sup> These columns are attached to this report as Exhibit 4.

<sup>311</sup> Laura Ingraham, New York Times (Nov. 20, 1996).

<sup>312</sup> Albert R. Hunt, Wall Street Journal (Apr. 10, 1997).

<sup>313</sup> Lars-Erik Nelson, New York Daily News (Apr. 22, 1998).

<sup>314</sup> Richard Cohen, Washington Post (Apr. 28, 1998).

<sup>315</sup> Anthony Lewis, New York Times (May 4, 1998).

<sup>316</sup> Marc Lacey, Los Angeles Times (May 4, 1998).

<sup>317</sup> Robert Scheer, Los Angeles Times (May 5, 1998).

<sup>318</sup> Marianne Means, Fort Worth Star-Telegram (May 6, 1998).

<sup>319</sup> Sandy Grady, Newark Star-Ledger (May 6, 1998).

<sup>320</sup> John Farmer, Newark Star-Ledger (May 7, 1998).

<sup>321</sup> Stephen Winn, Kansas City Star (May 9, 1998).

<sup>322</sup> Robert G. Beckel, Los Angeles Times (May 10, 1998).

<sup>323</sup> Norman Ornstein, Washington Post (May 13, 1998).

<sup>324</sup> David Grann, The New Republic (May 18, 1998).

<sup>325</sup> PBS’s The NewsHour with Jim Lehrer (Feb. 25, 1997).

<sup>326</sup> “Pit Bull” in the Chair; Rep. Burton Known as Tenacious Crusader, Washington Post (Mar. 19, 1997).



The Chairman's accusations generated headlines but were never substantiated. Over a year later, after hundreds of subpoenas and depositions, a senior Republican leadership aide had this to say about the Committee's investigation: "It's been very expensive, and it hasn't amounted to much."<sup>327</sup> Similarly, the Wall Street Journal reported: "the panel . . . has conducted just a handful of hearings that disclosed no major new evidence against the White House."<sup>328</sup>

Unfortunately, the pattern of "accuse first, investigate later" became a hallmark of the Committee's investigation. As one editorial observed, Chairman Burton has "variously accused the President of lying, covering up, obstructing justice and buying off witnesses—and proved not a one of his accusations."<sup>329</sup>

This tactic may have succeeded as a partisan political strategy. The majority's unsubstantiated allegations regularly received more media coverage than the actual facts. But as responsible congressional oversight, the approach was fundamentally flawed. It was unfair to those whose reputations were falsely maligned, misleading to the public, and a discredit to the House.

#### A. JOHN HUANG DID NOT "LAUNDER MONEY" THROUGH DAVID WANG

The Committee's first campaign finance hearing, held on October 9, 1997, was based on an unsubstantiated allegation. The star witness at that hearing was supposed to be David Wang, a used car salesman from Southern California. The majority alleged that Mr. Wang's testimony would prove that DNC fundraiser John Huang had met with Mr. Wang in Los Angeles on August 16, 1996, to solicit and receive conduit contributions from Mr. Wang. Before the hearing, Chairman Burton claimed: "This is the first time we have found an active person at the DNC who was involved in money laundering. So Mr. Huang, while he was an executive at the DNC in the finance area, was laundering money and we will be able to prove that."<sup>330</sup> In his opening statement, Chairman Burton stated that Mr. Wang's testimony was "the first time in my memory that we have seen evidence of such blatantly illegal activity by a senior national party official."<sup>331</sup>

These allegations, however, turned out to be false. Using evidence submitted to the Committee, as well as information available in the public record, a minority staff report demonstrated that the Chairman's allegations were untrue.<sup>332</sup> Mr. Huang's credit card records showed that Mr. Huang was in New York—not Los Angeles—on the day that Mr. Wang made the conduit contributions and allegedly met with John Huang. Moreover, affidavits and statements from witnesses who met and worked with Mr. Huang demonstrated that he was in New York during the period in question,

<sup>327</sup> Burton's Request for Funds Stalls as Investigation Fatigue Hits GOP, CQ's Inside Congress (Mar. 21, 1998).

<sup>328</sup> Burton's Campaign-Finance Probe Is Drawing Criticism for Mounting Costs and Slow Progress, Wall Street Journal (Mar. 27, 1998).

<sup>329</sup> Chairman's Rampage Demeans Entire House, Fayetteville Observer-Times (May 6, 1998).

<sup>330</sup> Burton Says Testimony Will Show Illegal Donation, Associated Press (Sept. 27, 1997).

<sup>331</sup> House Committee on Government Reform and Oversight, Hearings on Conduit Payments to the Democratic National Committee, 105th Congress, 1st Sess., 7 (Oct. 9, 1997).

<sup>332</sup> Minority Staff Report, Committee on Government Reform and Oversight, Evidence that John Huang Was in New York City on August 15, 16, 17, and 18 (Oct. 9, 1997).

including on the specific day Mr. Wang claimed to have met with Mr. Huang in Los Angeles.

Remarkably, the hearing was held even though the majority had received advance notice of the problems with Mr. Wang's testimony. Majority chief counsel Richard Bennett admitted during his questioning of Mr. Wang that "the day after your deposition, I was visited by John Huang's attorney . . . who insisted that his client was not with you in California on that particular day."<sup>333</sup> Chairman Burton and his staff, however, never investigated this exculpatory evidence. Nor has Chairman Burton retracted the allegation, clarified the public record, or apologized for his mistakes.

B. THE WHITE HOUSE VIDEOTAPES WERE NOT "CUT OFF  
INTENTIONALLY" OR "ALTERED"

Less than a month later, Chairman Burton appeared as a guest on CBS's "Face the Nation" to accuse the White House of doctoring videotapes of White House coffees and other events. Chairman Burton stated: "Some of the tapes were cut off very abruptly and then you go to another tape. We think . . . maybe some of those tapes may have been cut off intentionally, they've been—been, you know, altered in some way."<sup>334</sup>

Chairman Burton's allegation of tape alteration received substantial press coverage in the days following his appearance. Articles about his allegation appeared in the Washington Post,<sup>335</sup> the Los Angeles Times,<sup>336</sup> and in wire stories.<sup>337</sup> However, the allegation ultimately proved to be baseless. Investigations by both this Committee and the Senate Governmental Affairs Committee failed to produce any evidence of tape alteration. In fact, the investigations produced compelling evidence that the tapes had not been altered in any way.

For example, on October 23, 1997, Chief Petty Officer Charles McGrath, the career military officer in charge of the White House Communications Agency (WHCA) Audiovisual Unit, engaged in the following dialogue with Senator Levin at a Senate hearing:

Mr. LEVIN. Now, the allegation has been made here that these tapes have been altered in some way. Have they been?

Mr. MCGRATH. Not at all.

Mr. LEVIN. Well, we had Congressman Burton here make this allegation on Face the Nation last Sunday. Did you hear that allegation?

Mr. MCGRATH. I did not see that, but I did hear that he made the allegation.

Mr. LEVIN. And you know that it's not true?

Mr. MCGRATH. I know that for a fact.<sup>338</sup>

<sup>333</sup> House Committee on Government Reform and Oversight, Hearings on Conduit Payments to the Democratic National Committee, 105th Congress, 1st Sess., 257 (Oct. 9, 1997).

<sup>334</sup> CBS's Face the Nation (Oct. 19, 1997).

<sup>335</sup> Tapes May Have Been Altered, Rep. Burton Says, Washington Post (Oct. 20, 1997).

<sup>336</sup> Altering of Clinton Tapes Alleged, Los Angeles Times (Oct. 20, 1997).

<sup>337</sup> Carter Says Fund-Raising Back and Forth Are Hurting Country, Associated Press (Oct. 19, 1997).

<sup>338</sup> Hearing before Senate Committee on Governmental Affairs (Oct. 23, 1997).

Mr. McGrath's testimony before the Senate was echoed by other witnesses who testified before this Committee. For example, Steven Smith, a career Defense Department employee who worked in WHCA, was asked: "And you also said that you knew of no instance during your time where a tape was altered, doctored, edited, whatever words you want to use?" He replied, "That's correct."<sup>339</sup> Similarly, Colonel Joseph Simmons (Ret.), the commander of the career military employees at WHCA, testified as follows:

MINORITY COUNSEL. Are you aware of any effort by any White House personnel to doctor or alter the tapes?

Mr. SIMMONS. No.

MINORITY COUNSEL. Do you believe that your men would have [per]mitted such an effort to take place or succeed, had they become aware of it?

Mr. SIMMONS. Absolutely not.

MINORITY COUNSEL. Do you believe they would have informed you . . . of any efforts to doctor, alter, or otherwise edit the tapes?

Mr. SIMMONS. I know they would have.<sup>340</sup>

The Senate Committee even hired an independent expert, Paul Ginsburg, to review the videotapes. This expert also "determined . . . that there was no suspicious trickery."<sup>341</sup>

Ultimately, the evidence that the videotapes were not altered received far less attention than Chairman Burton's initial allegations. Ranking Minority Member Waxman pointed this out at a hearing on November 6, 1997, and requested that Chairman Burton at least acknowledge his mistake and correct the public record.<sup>342</sup> Chairman Burton has refused to retract this false accusation.

#### C. THE HUDSON CASINO DECISION WAS NOT A "POLITICAL PAYOFF"

In late 1997, the Committee commenced an extensive investigation into whether a decision by the Department of the Interior to deny an off-reservation Indian casino application was influenced by contributions made to the DNC by local tribes opposed to the application. Committee investigators took 18 depositions regarding the decision, including the depositions of ten Interior Department employees involved in the decision.<sup>343</sup> Although these depositions es-

<sup>339</sup> Deposition of Steven Smith, House Committee on Government Reform and Oversight, 99 (Oct. 18, 1997). All depositions referenced in this section, unless otherwise noted, were taken by the House Committee on Government Reform and Oversight.

<sup>340</sup> Deposition of Joseph Simmons, 149 (Oct. 18, 1997.)

<sup>341</sup> Burton's Hearings Resume Where Thompson's Ended, Roll Call (Nov. 6, 1997) (quoting a "Senate GOP source"). See also Expert: Coffee Tapes Are Clean, *Newsday* (Nov. 8, 1997) ("Paul Ginsburg, an expert hired by the Senate Governmental Affairs Committee to study the tapes for signs of doctoring, has 'found no evidence of improper alteration,' a committee staffer said.").

<sup>342</sup> House Committee on Government Reform and Oversight, Hearings on White House Compliance With Committee Subpoenas, 105th Cong., 1st Sess., 43 (Nov. 6, 1997). As noted by the *Hartford Courant*, "The Chairman of the House committee probing possible campaign finance abuses Thursday offered no proof to protesting Democrats of his allegation that White House coffee videotapes had been altered." No Proof Offered of Tape Tampering, *Hartford Courant* (Nov. 7, 1997).

<sup>343</sup> The Interior Department employees deposed were: Michael Anderson (Jan. 14, 1998); Michael Chapman (Jan. 9, 1998); Ada Deer (Jan. 12, 1998); John Duffy (Jan. 26, 1998); Tom Hartman (Dec. 8, 1997); Robert Jaeger (Dec. 11, 1997); Hilda Manuel (Jan. 6, 1998); Kevin Meisner (Jan. 16, 1998); Heather Sibbison (Jan. 15, 1998); and George Skibine (Jan. 13-14, 1998). The other individuals deposed concerning the Hudson decision were: Loretta Avent (Dec. 5, 1997); Thomas Corcoran (Dec. 10, 1997); Franklin Ducheneaux (Dec. 4, 1997); Ann Jablonski (Jan. 20,

tablished that the decision was based on the merits—and not the influence of campaign contributions—Chairman Burton and other Republican members persisted in making unsubstantiated, but widely reported, allegations of political corruption during four days of Committee hearings in January 1998.<sup>344</sup>

Chairman Burton, for example, alleged that the Department's decision was a "political payoff." He summarized his core allegations during the first day of the Committee's hearings as follows:

\$350,000 was given, which appears to be a political payoff; and then after that Mr. Duffy and Mr. Collier, two top executives at the Interior, go to work for the rich tribe. And then after that, Mr. Collier carries a \$50 to \$100,000 check to the DNC from the Shakopees. Now I don't know how anybody, even if they are blind, could not see these facts. . . . What we are talking about is whether or not the law was complied with, No. 1, whether or not campaign contributions were used to exert influence on people in the White House and at the Department of [the] Interior to kill this project. I think it is pretty clear, at least from my perspective it is pretty clear, that that's what happened.<sup>345</sup>

The Chairman's allegations were echoed by other Committee Republicans, who claimed that the tribes contributing to the DNC were "successfully buying influence"<sup>346</sup> and that "[t]his is an inquiry into whether corruption went to the highest levels of this Government."<sup>347</sup>

These allegations, however, were not supported by the evidence. The evidence showed that the Department had sound reasons for rejecting the casino application. Approval of the application would have permitted the federal government to remove the land from local control for the benefit of distant Indian tribes. Not surprisingly, local officials from the Hudson town council to Wisconsin Republican Governor Tommy Thompson opposed such a move, as did the local congressman, Republican Rep. Steve Gunderson.<sup>348</sup> Also, the land would have been used for casino gambling, which is illegal under Wisconsin law. In essence, the application would have allowed distant Indian tribes to impose casino gambling on an unwilling locality.<sup>349</sup>

These facts led some Republican Committee members to concede that the decision was correct on the merits. Rep. Christopher Cox,

1998); Jennifer O'Connor (Sept. 15, 1997); Patrick O'Donnell (Dec. 9 1997); Michael Schmidt (Jan. 8, 1998); and Tom Schneider (Dec. 10, 1997).

<sup>344</sup> House Committee on Government Reform and Oversight, Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Applications, 105th Cong., 2d Sess. (Jan. 21, 22, 28, and 29, 1998).

<sup>345</sup> *Id.* at v. 1, 106.

<sup>346</sup> *Id.* at v. 1, 164 (Statement of Rep. Souder).

<sup>347</sup> *Id.* at v. 1, 195 (Statement of Rep. Shadegg).

<sup>348</sup> See Resolution opposing casino gambling at St. Croix Meadows, Resolution No. 2-95 (Feb. 6, 1995); Letter from 29 Wisconsin state legislators to Secretary Babbitt (Mar. 28, 1995); Letter from Rep. Steve Gunderson to Secretary Babbitt (Apr. 28, 1995); Letter from Sen. Russ Feingold to Secretary Babbitt (June 29, 1995); Letter from Gov. Tommy Thompson to William Cranmer (June 9, 1995).

<sup>349</sup> The proposed casino also would have increased parking congestion in the area and impacted a nearby scenic riverway. See House Committee on Government Reform and Oversight, Hearings on The Department of the Interior's Denial of the Wisconsin Chippewa's Casino Applications, 105th Cong., 2d Sess. (Jan. 21, 22, 28, and 29, 1998), v. 1, 356; 396.

for example, acknowledged that “if I were making the decision with a view to vindicating the interests of the community that I represented, I might have gone the same way. I might have said no dog track.”<sup>350</sup> Other Republican members also expressed their opposition to casino gambling.<sup>351</sup>

Indeed, the majority’s frequently stated opposition to gambling led Rep. Robert Wise to observe that the opposite decision would have subjected the Department to a firestorm of criticism:

[H]ad you ruled the opposite way in the face of intense opposition from the State house on down in Wisconsin, basically Republican, much of it Republican dominated . . . we would be here today . . . conducting the same hearing, but it would be reversed. It would be . . . Why did you ignore the overwhelming local opposition in Wisconsin?<sup>352</sup>

Moreover, the evidence showed that the decision to reject the application was made exclusively on the merits. Every Department employee who testified before the Committee denied that the Department’s decision had been influenced—directly or indirectly—by campaign contributions. George Skibine, the career civil servant who recommended that the application be rejected, categorically denied the majority’s allegations:

I was not pressured in any way by anyone to reach a particular recommendation in this matter. You may choose to question the wisdom of my professional judgment in this matter, and reasonable people may disagree on the merits of my recommendation; however, it was made solely on the merits. Throughout this investigation I have always tried to tell the truth as I know it. I am a civil servant of two decades’ standing who has chosen a career in public service because I believe it is a high calling. My integrity, honesty, and good faith have never before been challenged.<sup>353</sup>

Hilda Manuel, deputy commissioner of the Bureau of Indian Affairs and Mr. Skibine’s supervisor, also denied that any improper influence had been brought to bear on the Department:

MINORITY COUNSEL. Were you ever contacted by the White House or the DNC about this project, the Hudson project?

MS. MANUEL. Never.

MINORITY COUNSEL. And at the time of the decision, did you feel like the White House or the DNC tried to improperly influence the outcome?

MS. MANUEL. No.

MINORITY COUNSEL. Do you think the decision was based on the record?

MS. MANUEL. Yes.<sup>354</sup>

<sup>350</sup> Id. at v. 1, 16.

<sup>351</sup> Rep. Mark Souder: “I believe gambling is a mortal sin, and I believe you’re wrong to pursue the casinos . . . And I don’t like this manipulation of going off the reservations.” Id. at v. 1, 96. Rep. John Mica: “I don’t support casino gambling.” Id. at v. 1, 158. Rep. Vince Snowbarger: “I am no proponent of gambling.” Id. at v. 1, 174. Rep. John Shadegg: “I have grave reservations about Indian gaming.” Id. at v. 1, 178.

<sup>352</sup> Id. at v. 1, 863.

<sup>353</sup> Id. at v. 1, 205.

<sup>354</sup> Deposition of Hilda Manuel, 98 (Jan. 6, 1998).

Similarly, Deputy Assistant Secretary Michael Anderson, the final decision maker, testified that "I have absolutely no knowledge of any improper political influence or even, for that matter, from the DNC any rumors or suggestions that there was political corruption going on in this decision."<sup>355</sup>

In addition, the majority was never able to establish any connection between the Department's decision and subsequent legal work done by two senior Department employees for the tribes opposed to the application. One of those employees, Tom Collier, testified that he was not even working at the Department at the time the decision was made:

I want to reiterate that there is no connection whatsoever to any work I ever did at the Department of the Interior and my representation of the Shakopees. . . . I was not involved in this decision at the Department of [the] Interior. I had left the Department when this decision was made.<sup>356</sup>

At the conclusion of the third day of hearings, it was apparent that the evidence before the Committee fundamentally conflicted with the majority's allegations.<sup>357</sup> Rather than acknowledging this conflict, however, Chairman Burton continued to assert that the Department's decision "stinks" and "smells" based on the circumstantial evidence that the decision favored the tribes that had made contributions to the DNC.<sup>358</sup>

On February 11, 1998, Attorney General Reno recommended that an independent counsel be appointed to investigate possible false statements to Congress by Secretary Babbitt relating to the Hudson casino decision. While the appointment of an independent

<sup>355</sup> House Committee on Government Reform and Oversight, *Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Applications*, 105th Cong., 2d Sess. (Jan. 21, 22, 28, and 29, 1998), v. 1, 369.

<sup>356</sup> *Id.* at v. 1, 721. The other employee, John Duffy, similarly denied any connection between the decision and his subsequent work. He noted that he played no role whatsoever in seeking out the opposing tribe as clients: "Let me make sure we understand this. I am not working on any issue for the Shakopees that I worked on at the Department of [the] Interior. . . . I mean, the connection that is trying to be made here, with improper conduct on my part, which I frankly am strongly upset about, is that I joined a law firm which already had a client, which, at some point in time, was interested in a decision that I participated in but didn't make. Now, with great respect, Congressman, I don't see the appearance of impropriety here." *Id.* at v. 1, 760.

<sup>357</sup> The principal testimony supporting the majority's allegations was the testimony of Fred Havenick, the owner of the proposed casino site. Mr. Havenick was the prime mover behind the casino application because he believed a casino would salvage a failed dog track he had built at the site, an investment that was incurring multi-million dollar losses annually. Mr. Havenick alleged that at a meeting with Mr. Skibine, Mr. Skibine had explained that the application was killed because of "politics." Mr. Havenick's allegation was supported by affidavits from two officials of the disgruntled applicant tribes. Mr. Havenick also alleged that at a Democratic fundraising event, Terry McAuliffe, a prominent Democratic fundraiser, had boasted that he had killed the application.

There was considerable evidence that conflicted with Mr. Havenick's testimony, however. First, Mr. Skibine vehemently denied saying that the application was killed because of "politics," and his denial was supported by the affidavits of five Interior Department employees who attended the meeting. Similarly, Mr. McAuliffe submitted a statement to the Committee denying Mr. Havenick's allegation. Statement of Terence McAuliffe (Jan. 28, 1998). Moreover, the Committee's hearing was the first time Mr. Havenick made his allegation against Mr. McAuliffe, despite having litigated the Department's decision for more than two years on the basis of improper political influence. As Rep. Kucinich noted, "I find it very unusual that this story about Mr. McAuliffe surfaces today even though it never came up in what can only be described as very contentious litigation with the Department." House Committee on Government Reform and Oversight, *Hearings on the Department of the Interior's Denial of the Wisconsin Chippewa's Casino Applications*, 105th Cong., 2d Sess. (Jan. 21, 22, 28, and 29, 1998), v. 1, 173.

<sup>358</sup> *Id.* at v. 1, 340.

counsel is a serious matter, the Attorney General's recommendation does not substantiate the majority's allegations. In fact, in the independent counsel application, Attorney General Reno stated that she "did not have specific and credible evidence to suggest that Secretary Babbitt had participated in any criminal activity to corrupt the decision making process."<sup>359</sup> The independent counsel was appointed solely to investigate the truthfulness of Secretary Babbitt's statements concerning a meeting he had with a lobbyist on the Hudson casino application.<sup>360</sup>

D. THERE IS NO EVIDENCE THAT THE PRESIDENT CREATED A NATIONAL MONUMENT IN UTAH "IN EXCHANGE FOR MONEY FROM INDONESIA'S LIPPO GROUP"

Chairman Burton also alleged that President Clinton created a national monument in Utah in order to benefit the Lippo Group. For example, on April 16, 1998, the Indianapolis Star reported: "Although he is not yet able to prove his suspicions, Burton's chief concern is that U.S. policies were compromised in exchange for campaign contributions. Among the possibilities: that Clinton declared 1.8 million acres of coal-rich southern Utah as a national park in exchange for money from Indonesia's Lippo Group. Indonesia is the chief competitor to Utah for low-polluting coal."<sup>361</sup>

On June 11, 1998, Chairman Burton restated his allegation on the House floor:

Who would benefit from turning that into a national park so you cannot mine there? The Riady group, the Lippo Group, and Indonesia has the largest clean-burning coal facility, in southeast Asia. They were one of the largest contributors. . . . Could there be a connection there? We need to know. The American people have a right to know, but we do not know.<sup>362</sup>

After nearly two years of investigation, however, the Committee has produced no evidence supporting the Chairman's allegations. To the contrary, as the Washington Times has reported, "hundreds

<sup>359</sup> See Application to the Court Pursuant to 28 U.S.C. § 592(e)(1) for the Appointment of an Independent Counsel, 8 (Feb. 11, 1998).

<sup>360</sup> Id. at 2. The controversy involved the conflicting testimony of Secretary Babbitt and Paul Eckstein, a lobbyist working for the applicant tribes. According to Mr. Eckstein, Mr. Babbitt told Mr. Eckstein that then-White House Deputy Chief of Staff Harold Ickes had called Mr. Babbitt and directed him to make a decision on the casino application. In a July 14, 1995, letter to Senator McCain, Secretary Babbitt denied telling Mr. Eckstein that he had spoken to Mr. Ickes. Secretary Babbitt later testified that he did not tell Mr. Eckstein that Mr. Ickes told him to make a decision. In his testimony before the Committee, Secretary Babbitt said that he told Mr. Eckstein that "Mr. Ickes, the Department's point of contact on many Interior matters, wanted or expected the Department to decide the matter promptly." Mr. Babbitt explained, "It was just an awkward effort to terminate an uncomfortable meeting on a personally sympathetic note. But . . . I had no such communication with Mr. Ickes or anyone else from the White House." Testimony of Secretary Babbitt before the Senate Governmental Affairs Committee (Oct. 30, 1997).

In the application for the appointment of the independent counsel, Attorney General Reno did not reach a conclusion on whether Mr. Babbitt made a false statement. She noted, "It must be decided by an Independent Counsel whether the evidence of falsity . . . is sufficient to prove beyond a reasonable doubt that Secretary Babbitt's testimony was untrue, and if so, whether prosecution is warranted as an exercise of discretion." Application to the Court Pursuant to 28 U.S.C. § 592(e)(1) for the Appointment of an Independent Counsel, at 5. In fact, the Attorney General found "evidence suggesting that Secretary Babbitt lacked criminal intent" when he made those statements. Id. at 7.

<sup>361</sup> Burton's Pursuit of President, Indianapolis Star (Apr. 16, 1998).

<sup>362</sup> Congressional Record, H4544 (June 11, 1998).

of pages of administration documents turned over to congressional investigators show no Lippo connection.”<sup>363</sup>

E. THE HUBBELL TAPES DID NOT SHOW A “PAYOFF” TO WEBSTER HUBBELL

On April 30, 1998, Chairman Burton unilaterally released tapes of Webster Hubbell’s prison conversations. According to the Chairman, these tapes proved that Mr. Hubbell had been paid to protect the President and the First Lady. Appearing on NBC’s “Meet the Press,” Chairman Burton alleged that the tapes showed that “it appears to be a payoff—it looks like the White House was trying to keep Webb Hubbell quiet and they’ve been successful.”<sup>364</sup>

It was subsequently revealed, however, that the tape transcripts released by Chairman Burton omitted exculpatory statements by Mr. Hubbell that contradicted the Chairman’s allegation. For example, Chairman Burton omitted a passage where Mr. Hubbell tells his wife that “most of the articles are presupposing that . . . my silence is being bought. We know that’s not true.”<sup>365</sup>

Moreover, the Chairman’s allegation of a “payoff” was not supported by the evidence before the Committee. The majority devoted a substantial portion of the Committee’s investigative resources to examining, in exhaustive detail, Mr. Hubbell’s activities. Although there was little apparent connection to campaign finance issues, the majority investigated numerous subjects relating to Mr. Hubbell, including: Mr. Hubbell’s discussions in 1993 with partners at the Rose Law Firm,<sup>366</sup> whether Mr. Hubbell maintained documents relating to the “Whitewater” land deal,<sup>367</sup> whether there were discussions at the White House about subpoenas from Independent Counsels Robert Fiske or Kenneth Starr to Mr. Hubbell,<sup>368</sup> whether persons close to the President hired Mr. Hubbell in 1994 to obstruct Independent Counsel Starr’s investigation,<sup>369</sup> what income Mr. Hubbell reported on his tax returns,<sup>370</sup> the circumstances surrounding Mr. Hubbell’s resignation from the Department of Justice,<sup>371</sup> contacts with Mr. Hubbell after his resignation from the Department of Justice,<sup>372</sup> contacts with Mr. Hubbell while he was incarcerated,<sup>373</sup> contacts with Mr. Hubbell’s wife while Mr. Hubbell was incarcerated,<sup>374</sup> the trust funds set up for Mr. Hubbell’s children and legal expenses when he went to prison,<sup>375</sup> and Mr. Hubbell’s reasons for asserting his Fifth Amendment rights.<sup>376</sup>

<sup>363</sup> Congress Checks Lippo Link to “Clean Coal” Closure, Washington Times (July 24, 1997).

<sup>364</sup> NBC’s Meet the Press (May 3, 1998).

<sup>365</sup> Production from the Department of Justice to the House Committee on Government Reform and Oversight, Tape 100A (July 2, 1997).

<sup>366</sup> See, e.g., Deposition of Marsha Scott, 25–28 (Sept. 10, 1997).

<sup>367</sup> See, e.g., Deposition of Michael Kantor, 30–31 (Aug. 8, 1997).

<sup>368</sup> See, e.g., Deposition of Mack McLarty, 36, 44, 104–05 (Sept. 5, 1997).

<sup>369</sup> See, e.g., Deposition of Michael Kantor, 54–55 (Aug. 8, 1997).

<sup>370</sup> See, e.g., Deposition of Michael Schaufele, 88–89 (Aug. 29, 1997).

<sup>371</sup> See, e.g., Deposition of James Blair, 33–42 (July 23, 1997).

<sup>372</sup> See, e.g., Interrogatories from House Committee on Government Reform and Oversight to Erskine Bowles, No. 6 (Apr. 20, 1998).

<sup>373</sup> See, e.g., Interrogatories from House Committee on Government Reform and Oversight to John Richardson, No. 28 (Dec. 8, 1997).

<sup>374</sup> See, e.g., Interrogatories from House Committee on Government Reform and Oversight to Nathan Landow, No. 16 (Apr. 1, 1998).

<sup>375</sup> See, e.g., Deposition of Michael Schaufele, 51–66 (Aug. 29, 1997).

<sup>376</sup> See, e.g., Id. at 67–68 (Aug. 29, 1997).



In investigating these various topics, the majority deposed 42 people, took testimony through written interrogatories from 17 others, and requested documents from 96 companies and individuals. This extensive record shows that the witnesses who hired Mr. Hubbell did so because they had legitimate work for him to do,<sup>377</sup> because he had valuable connections in the government,<sup>378</sup> or out of compassion for a friend<sup>379</sup>—not as a “payoff” to obstruct justice. In fact, there is so little evidence of a “payoff” that the majority report is completely silent on this issue and the majority never held a single day of hearings on Mr. Hubbell.

During his appearance on “Meet the Press” on May 3, 1998, Chairman Burton also alleged that a taped discussion between Mr. Hubbell and his attorney about “a move that moots everything” indicated that the President was considering a presidential pardon for Mr. Hubbell. According to Chairman Burton, the taped conversation “means that they thought the president might pardon Webb Hubbell right after the election and get him off the hook.” This assertion also proved to be completely erroneous. On May 3, 1998, Mr. Hubbell’s attorney, John Nields, appeared on ABC’s “This Week” and explained that the conversation related to obtaining a grant of immunity from the Independent Counsel’s office, which ultimately did happen.<sup>380</sup>

Rather than acknowledging that his allegations could not be substantiated, Chairman Burton actually claimed that the public criticism caused by the release of the doctored transcripts validated his allegations of wrongdoing. As he put it, “When you hear the other side squealing like a bunch of pigs, then you understand you’re getting somewhere near the truth.”<sup>381</sup>

#### F. THE IMMUNIZED WITNESSES DID NOT HAVE “DIRECT KNOWLEDGE ABOUT HOW THE CHINESE GOVERNMENT MADE ILLEGAL CAMPAIGN CONTRIBUTIONS”

On April 23, 1998, Chairman Burton scheduled a Committee meeting to seek immunity for four witnesses: Nancy Lee, Irene Wu, Kent La, and Larry Wong. These witnesses were individuals with varying degrees of relationship to individuals being investigated by the Committee. Ms. Lee and Ms. Wu were former employees of Johnny Chung. Mr. La was a business associate of Ted Sioeng, and Mr. Wong was a former employee of Nora Lum.

Committee Democrats objected. One week before the scheduled meeting, Chairman Burton had called the president a “scumbag” and said that he was “after” the President.<sup>382</sup> These remarks caused the Democratic members of the Committee to oppose immunity. As Rep. Eleanor Holmes Norton explained:

<sup>377</sup> See, e.g., Deposition of Bernard Rapoport, 41, 49–50, Ex. 7 (Aug. 19, 1997) (testifying that Mr. Hubbell was hired to lobby and consult and that Mr. Hubbell, in fact, did legitimate work).

<sup>378</sup> See, e.g., Deposition of Jim Lewin, 34–50 (Aug. 21, 1997) (testifying that U.S. Sprint hired Mr. Hubbell because he was a highly connected individual who could help counter AT&T in lobbying).

<sup>379</sup> See, e.g., Deposition of John Phillips, 43–53 (July 31, 1997) (testifying that he was a close friend of Mr. Hubbell and helped him obtain a grant).

<sup>380</sup> ABC’s *This Week* (May 3, 1998).

<sup>381</sup> CNN’s *Inside Politics* (May 4, 1998).

<sup>382</sup> Burton’s Pursuit of President, *Indianapolis Star* (Apr. 16, 1998).

I regret and protest that I have been forced to vote against immunity in order to protest rank unfairness in this committee. I have been driven, as has every Member on my side been driven, to vote against what they wanted to vote for.<sup>383</sup>

Moreover, several Committee members expressed concern that the Committee had not obtained proffers from the witnesses explaining what their testimony might be if granted immunity. Rep. Paul Kanjorski observed, "The Chair should have provided written proffers so that we could accurately ascertain whether the information to be derived by these witnesses is reasonable in terms of offering immunity."<sup>384</sup>

Finally, Committee Democrats noted that Chairman Burton had not yet responded to their letter of October 22, 1997, asking for changes in the Committee's approach to immunity.<sup>385</sup> That letter was written shortly after the Committee's October 9, 1997, hearing where the Committee had given a witness (David Wang) immunity for tax and immigration fraud in return for demonstrably false testimony. In the letter, Committee Democrats asked that the Chairman's unilateral powers be returned to the Committee before any additional witnesses were granted immunity.

Chairman Burton and many other Republican members and leaders responded to the minority's reluctance to support immunity by accusing the Democratic Committee members of obstructing the Committee's investigation. According to Republicans, Democrats voted against immunity to prevent the four witnesses from providing essential information about Chinese influence in the 1996 Presidential campaign. In a floor statement, Speaker Gingrich alleged that:

[A]t a time when the American people could have learned the truth from eyewitnesses who participated in laundering foreign illegal money, a threat to the entire fabric of our political system, for some reason the Democrats voted 19-0 against allowing immunity. That means they voted 19-0 to cover up this testimony, to block it from getting to the American people, and to prevent the Congress from being informed.<sup>386</sup>

To support their claims of Democratic obstruction, Republican members of Congress repeatedly emphasized the importance of the four witnesses. For example, Rep. John Boehner, Republican Conference Chair, stated that the witnesses "have direct knowledge about how the Chinese government made illegal campaign contributions in an apparent attempt to influence our foreign policy" and opined that granting immunity "is about determining whether American lives have been put at risk."<sup>387</sup> Similarly, Committee Republican Rep. Steven Horn expressed his belief that immunization

<sup>383</sup> House Committee on Government Reform and Oversight, Business Meeting (Apr. 23, 1998).

<sup>384</sup> *Id.*

<sup>385</sup> Letter from Rep. Waxman to Chairman Burton (Oct. 22, 1997).

<sup>386</sup> Congressional Record, H2336 (Apr. 28, 1998).

<sup>387</sup> Congressional Record, H3453 (May 19, 1998).

of the four witnesses was “absolutely essential.”<sup>388</sup> Chairman Burton stated that the witnesses would be “very knowledgeable” about contributions made by Nora and Gene Lum<sup>389</sup> and would “shed the light” on the activities of Johnny Chung and Ted Sioeng.<sup>390</sup>

All of these allegations turned out to be wrong. On June 23, 1998, after Chairman Burton agreed to some changes to the Committee rules relating to subpoenas, document release, and depositions, the Democratic members agreed to support immunity for the four witnesses. The testimony that the Committee subsequently obtained from the witnesses showed that they had no knowledge—direct or indirect—about illegal Chinese campaign contributions.<sup>391</sup>

For example, during the deposition of Nancy Lee, the Committee learned that for most of Ms. Lee’s tenure as an employee of Mr. Chung’s company, she worked part-time between the hours of 9:00 p.m. and 12 midnight and rarely saw Mr. Chung.<sup>392</sup> Ms. Lee’s lack of knowledge about Johnny Chung’s political activities was demonstrated during the minority counsel’s questioning:

MINORITY COUNSEL. Your lawyer said that you had no knowledge about Johnny Chung’s source of funds, where he got his money from. Is that true?

Ms. LEE. Yes.

\* \* \* \* \*

MINORITY COUNSEL. And that you don’t—do you know about whether Johnny Chung got any money from any citizen of China or any business from China for a political contribution here in the United States?

Ms. LEE. I don’t know.

MINORITY COUNSEL. Do you know whether there was any plan by the Chinese government to influence the 1996 American election? Do you know anything about that?

Ms. LEE. No idea.<sup>393</sup>

Similarly, Irene Wu had no “direct knowledge”—or even indirect knowledge—regarding any Chinese efforts to influence the 1996 elections. She did not provide the Committee with any information on whether Johnny Chung received money from the Chinese government, whether there was a Chinese plan to influence the 1996 elections, or whether Mr. Chung received any money from Chinese businesses unrelated to legitimate business transactions. In fact, she testified as follows:

<sup>388</sup> Rep. Horn, House Committee on Government Reform and Oversight, Business Meeting (May 13, 1998).

<sup>389</sup> Opening Statement by Chairman Burton, House Committee on Government Reform and Oversight, Business Meeting (Apr. 23, 1998).

<sup>390</sup> *Id.*

<sup>391</sup> The four witnesses were not the first witnesses given immunity by the Committee who had little or no information to contribute to the Committee’s investigation. The Committee’s first hearing featured two immunized witnesses, Manlin Fong and Joseph Landon, who testified to being unwittingly involved in making conduit contributions to the DNC. Those conduit contributions had been disclosed by the DNC to the Justice Department seven weeks before the hearing. Minority staff interview with Judah Best (Sept. 18, 1997). Ms. Fong, who is Charlie Trie’s sister, had no knowledge about her brother’s businesses, political activities, or contacts with the Chinese government. Mr. Landon made his contribution at Ms. Fong’s request, and had no other relevant information to share with the Committee.

<sup>392</sup> Deposition of Nancy Lee, 68 (July 29, 1998).

<sup>393</sup> *Id.* at 54–55.

MINORITY COUNSEL. Do you have any knowledge whether the Chinese government ever reimbursed Johnny Chung for a political contribution?

Ms. WU. I don't.

\* \* \* \* \*

MINORITY COUNSEL. Do you know whether Johnny Chung ever received any money from any Chinese citizen or business in order to make a political contribution?

Ms. WU. I don't know.

\* \* \* \* \*

MINORITY COUNSEL. Do you know whether there was a plan by the Chinese government to influence the 1996 American election through political contributions?

Ms. WU. I don't know.<sup>394</sup>

Republican allegations concerning Larry Wong's knowledge also proved to be baseless. At an April 23, 1998, Committee meeting, Rep. John Shadegg stated that Larry Wong "is believed to have relevant information regarding the conduit for contributions made by the Lums and others in the 1992 fund-raising by John Huang and James Riady."<sup>395</sup> The reality, however, was that Mr. Wong's primary responsibilities were to register voters and serve as a volunteer cook. The sum total of his testimony regarding James Riady is as follows:

MINORITY COUNSEL. Did Nora ever discuss meeting James Riady?

Mr. WONG. James who?

\* \* \* \* \*

MINORITY COUNSEL. James Riady.

Mr. WONG. No.<sup>396</sup>

Mr. Wong also provided minimal information to the Committee concerning John Huang.<sup>397</sup>

The last immunized witness was Kent La, a business associate of Ted Sioeng. An agreement with the Justice Department has prevented the Committee from releasing the transcript of Mr. La's deposition. At a Committee hearing, however, Rep. Waxman stated: "The four witnesses . . . don't know anything about transferring technology to China. They don't know anything about possible campaign contributions from the Chinese Government."<sup>398</sup>

Ironically, after insisting on the importance of the immunized witnesses, the majority substantially delayed public access to their

<sup>394</sup> Deposition of Irene Wu, 86-88 (July 28, 1998).

<sup>395</sup> Rep. Shadegg, House Committee on Government Reform and Oversight, Business Meeting (Apr. 23, 1998). Nora and Gene Lum are Democratic fundraisers convicted of making conduit contributions to various Democratic campaigns. They also ran the Asian Pacific Advisory Council, an organization supportive of the 1992 Clinton/Gore campaign, and appear to have mis-handled funds raised by that organization.

<sup>396</sup> Deposition of Larry Wong, 85 (July 27, 1998).

<sup>397</sup> Mr. Wong's testimony concerning John Huang was limited to his knowledge that Mr. Huang was employed at the Department of Commerce, and that he had never spoken with Nora Lum about any meetings she had with Mr. Huang at the Department of Commerce. *Id.* at 102-103.

<sup>398</sup> House Committee on Government Reform and Oversight, Hearing on the Need for an Independent Counsel in the Campaign Finance Investigation, 105th Cong., 2d Sess., 67 (Aug. 4, 1998).

testimony. At a Committee hearing on August 4, 1998, Democratic Rep. Jim Turner moved to make public the depositions of Ms. Lee, Ms. Wu, and Mr. Wong. Chairman Burton initially opposed this motion, stating his view that "it is premature to release those [depositions] right now."<sup>399</sup> Shortly thereafter, he reversed himself and agreed to release the depositions on August 14, 1998. The depositions, however, were not released until nearly a month later. Moreover, the majority abruptly and without explanation canceled the hearing scheduled for September 10, 1998, at which Ms. Wu was supposed to testify.

G. PRESIDENT CLINTON DID NOT "ENDORSE" THE CANDIDACY OF A FOREIGN LEADER IN EXCHANGE FOR CAMPAIGN CONTRIBUTIONS

At a Committee hearing on October 8, 1997, Chairman Burton released a "proffer" his staff had obtained from Nora and Gene Lum, two Democratic fundraisers who pled guilty to facilitating illegal conduit contributions in 1994 and 1995. Chairman Burton alleged that if immunized, the Lums' testimony would show that "there was real corruption in the financing of campaigns in this country and that this corruption may have affected our foreign policy and possibly our national security."<sup>400</sup> Specifically, the Lums' proffer suggested that during the 1992 campaign, then-candidate Clinton "endorsed" the candidacy of a foreign leader in exchange for a campaign contribution.<sup>401</sup> This proffer was widely reported in the press.<sup>402</sup>

To investigate this allegation and other allegations involving the Lums, the Committee sent out almost 200 information requests—close to one-sixth of the total information requests for the entire investigation. The Committee's sprawling inquiry into the Lums resulted in the receipt of over 40,000 pages of documents, 50 audiotapes, and a videotape, and involved numerous depositions.

This extensive investigation, however, uncovered no evidence to substantiate the proffer's dramatic allegations. In fact, the investigation uncovered so little evidence to corroborate the allegations that the majority's final report does not even discuss the Lums. There has been no public acknowledgment by Chairman Burton of his failure to substantiate the well-publicized proffer.

H. THE COMMITTEE FAILED TO SUBSTANTIATE THE EXISTENCE OF A "MASSIVE SCHEME" TO FUNNEL FOREIGN CONTRIBUTIONS INTO THE U.S.

Perhaps the most significant allegation made during the campaign finance investigation was the allegation that there was a conspiracy between the Chinese government and the Clinton Administration to violate federal campaign finance laws and improperly influence the outcome of the 1996 presidential election. At the

<sup>399</sup> Id. at 6.

<sup>400</sup> House Committee on Government Reform and Oversight, Hearings on Campaign Finance Improprieties and Possible Violations of Law, 105th Cong., 1st Sess., 12 (Oct. 8, 1997).

<sup>401</sup> Proffer of Nora and Gene Lum to the Committee on Government Reform and Oversight (Aug. 22, 1997).

<sup>402</sup> Story of a Foreign Donor's Deal with '92 Clinton Camp Outlined, Washington Post (Oct. 9, 1997); Robert Novak, . . . And Next Up, the Bean-Spillers, Washington Post (Oct. 13, 1997); Hawaiian Couple to Get Immunity for Testimony before Burton Panel, Roll Call (Oct. 9, 1997).

outset of the investigation, Chairman Burton raised the possibility of such a conspiracy, stating:

If the White House or anybody connected with the White House was selling or giving information to the Chinese in exchange for political contributions, then we have to look into it because that's a felony, and you're selling this country's security—economic security or whatever to a communist power.<sup>403</sup>

A few months later, Chairman Burton alleged the existence of a “massive” Chinese conspiracy:

We are investigating a possible massive scheme . . . of funneling millions of dollars in foreign money into the U.S. electoral system. We are investigating allegations that the Chinese government at the highest levels decided to infiltrate our political system.<sup>404</sup>

Although the Committee's investigation veered off in many different directions, the allegation of a Chinese conspiracy remained the Committee's primary focus. To prove this allegation, the Committee subpoenaed over 1.5 million pages of documents, took hundreds of hours of depositions, and spent millions of taxpayer dollars. None of the witnesses deposed by the Committee, however, corroborated the existence of such a conspiracy. In fact, as discussed above, even the witnesses who the majority alleged would have “direct knowledge” of a Chinese conspiracy, such as Irene Wu and Nancy Lee, turned out to have no such knowledge. Not one of the over 1.5 million pages of documents subpoenaed by the Committee provided evidence of a Chinese conspiracy.

It is, of course, nearly impossible to prove a negative. In this case, the minority cannot prove that there was not a secret conspiracy between the Chinese government and the Clinton Administration to violate federal campaign finance laws. Nonetheless, no evidence provided to the Committee substantiates the claim that the Administration was “selling or giving information to the Chinese in exchange for political contributions.” If there was a “massive” Chinese conspiracy to influence American elections, it eluded detection by the Committee.

#### I. OTHER UNSUBSTANTIATED REPUBLICAN ALLEGATIONS

There were many other unsubstantiated allegations made by Republican leaders during the course of the Committee's campaign finance investigation. These include:

- *The Allegation That the Clinton Administration Was Selling Burial Plots in Arlington National Cemetery.* In November 1997, numerous Republican leaders drew on unsubstantiated reports by conservative radio talk shows and publications to accuse the Clinton Administration of selling burial plots in Arlington National Cemetery for campaign contributions. Speaker Gingrich, Sen. Arlen Specter, and other Republicans called for an immediate investiga-

<sup>403</sup> CNN's Late Edition with Frank Sesno (Feb. 16, 1997).

<sup>404</sup> Congressional Record, H4097 (June 20, 1997).

tion,<sup>405</sup> and Chairman Burton declared his intention to investigate the matter.<sup>406</sup> These allegations, however, turned out to lack any foundation in fact. An independent investigation by the GAO determined that political contributions played no role whatsoever in the granting of Arlington Cemetery waivers.<sup>407</sup>

- *The Allegation That Secretary of Energy Hazel O'Leary Sold Access to a Meeting.* In August 1998, several Republican leaders called for an independent counsel to investigate allegations that former Energy Secretary Hazel O'Leary had, in effect, "shaken down" Johnny Chung by requiring him to make a donation to the charity Africare as a precondition to a meeting with her. For example, Rep. Gerald Solomon, the Chairman of the House Rules Committee, criticized the Attorney General for being "intransigent" in refusing to appoint an independent counsel.<sup>408</sup> An investigation by the Department of Justice, however, found "no evidence that Mrs. O'Leary had anything to do with the solicitation of the charitable donation."<sup>409</sup> In fact, it turned out that Secretary O'Leary's first contact with Mr. Chung occurred after Mr. Chung had made his contribution, making the allegation factually impossible.<sup>410</sup>

- *The Allegation That the President and the First Lady Conspired with the DNC to Steal the President's Christmas Card List.* After an extensive investigation by the Committee and the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, Rep. David McIntosh alleged that he had evidence that the President, the First Lady, and other individuals were involved in the "theft" of government property and resources, specifically the President's Christmas card list and other information from the White House database. According to the majority report on the matter, the Committee acted to "expose the evidence of the President's possible involvement in the theft of government property and his abuse of power."<sup>411</sup> In fact, as documented in detail in the minority views, not one witness deposed or interviewed by the Committee supported Rep. McIntosh's allegations.<sup>412</sup>

- *The Allegation That the Justice Department Retaliated Against Chairman Burton.* On September 14, 1997, Chairman Burton alleged on national television that the Justice Department was investigating him for possible campaign fundraising violations in retaliation for his efforts to investigate President Clinton. Chairman Burton stated that "it's kind of sad and scary . . . that you're having agencies of the federal government going after almost anybody

<sup>405</sup> West Denies He Broke Any Rules on Arlington Cemetery Waivers, Washington Times (Nov. 21, 1997).

<sup>406</sup> Burton to Probe Plots-for-Politics Allegations, Indianapolis Star News (Nov. 21, 1997).

<sup>407</sup> General Accounting Office, Arlington National Cemetery: Authority, Process, and Criteria for Burial Waivers, GAO/T-HEHS-98-81 (Jan. 28, 1998).

<sup>408</sup> GOP Lawmaker Seeks Counsel to Probe O'Leary-Chung Tie, Buffalo News (Aug. 22, 1997).

<sup>409</sup> Notification to the Court Pursuant to 28 U.S.C. § 592(b) of Results of Preliminary Investigation (Dec. 2, 1997).

<sup>410</sup> Id. This fact was also discovered by the Committee's own investigation. Shortly after the allegations against Secretary O'Leary became public, Chairman Burton appeared on national television to announce his intent to investigate the charges. CBS's Face the Nation (Aug. 24, 1997). Ultimately, the Committee deposed several individuals, including Secretary O'Leary, and scheduled a hearing into the matter. Upon discovering that the allegations were false, the majority canceled the hearings but never publicly cleared Secretary O'Leary of wrongdoing.

<sup>411</sup> House Committee on Government Reform and Oversight, Investigation of the Conversion of the \$1.7 Million Centralized White House Computer System, Known as the White House Database, and Related Matters, H. Rpt. No. 105-828, 105th Cong. 2nd Sess. (1998).

<sup>412</sup> Id. at 556 (Minority Views).

who's looking into allegations against this president and this administration."<sup>413</sup> Although it is true that the Justice Department is investigating Chairman Burton's fundraising practices, the Department's investigation was triggered by allegations by lobbyist Mark Siegel that Chairman Burton had pressured him for campaign contributions.<sup>414</sup>

Many other sensational but unsubstantiated allegations regarding the Clinton Administration were made by Committee Republicans in the 104th Congress. These allegations included the following:

- *The Allegation That the White House Directed the IRS and FBI to Investigate Political Enemies.* Numerous Republicans alleged that the White House misused the IRS and the FBI to investigate and harass the White House travel office employees. For example, Rep. John Mica charged that the travel office firings "involved the abuse of the FBI and the IRS."<sup>415</sup> Rep. Dan Burton claimed that "somebody at the White House was talking to the IRS about an investigation. That is illegal."<sup>416</sup> Rep. Christopher Shays alleged that "the White House misused the FBI and the Justice Department to go after an innocent man."<sup>417</sup>

These allegations were not supported by the evidence. The General Accounting Office determined that "FBI and IRS officials' actions during the period . . . were reasonable and consistent with the agencies' normal procedures" and that there was "no evidence that White House staff made any contact with IRS about the Travel Office matter."<sup>418</sup> The Department of Justice Office of Professional Responsibility found that the FBI acted properly throughout the travel office investigation.<sup>419</sup> The Department of the Treasury Inspector General also determined that there was no contact between the White House and the IRS.<sup>420</sup>

- *The Allegation That the White House Illegally Fired the Travel Office Employees.* Republicans also alleged that the White House fired the employees of the White House travel office so that White House travel business would be given to Harry Thomason, a Clinton political supporter. For example, the Committee report concluded that "the motive for the firings was political cronyism: the President sought to reward his friend, Harry Thomason, with the spoils of the White House travel business."<sup>421</sup> Similarly, Chairman Clinger alleged, "When the White House wanted to find a base for

<sup>413</sup> NBC's Meet the Press (Sept. 14, 1997).

<sup>414</sup> Pakistan Lobbyist's Memo Alleges Shakedown by House Probe Leader, Washington Post (Mar. 19, 1997).

<sup>415</sup> House Committee on Government Reform and Oversight, Hearings on Security of FBI Background Files, 105th Cong., 2nd Sess., 103 (June 19, 1996).

<sup>416</sup> House Committee on Government Reform and Oversight, Hearings on White House Travel Office, 105th Cong., 2nd Sess., 110 (Jan. 24, 1996).

<sup>417</sup> House Committee on Government Reform and Oversight, Hearings on Security of FBI Background Files, 105th Cong., 2nd Sess., 459 (June 26, 1996).

<sup>418</sup> General Accounting Office, Report to Congress on the White House Travel Office Operations, GAO/GCD-94-132, 5 (May 2, 1994).

<sup>419</sup> U.S. Department of Justice Office of Professional Responsibility, Report of OPR's Review of the Conduct of the FBI in Connection with Its Contacts with the White House in the Travel Office Matter (Mar. 18, 1994).

<sup>420</sup> General Accounting Office, Report to Congress on the White House Travel Office Operations, GAO/GGD-94-132, 64 (May 2, 1994).

<sup>421</sup> Committee on Government Reform and Oversight, Investigation of the White House Travel Office Firings and Related Matters, 104th Cong., 2nd Sess., H. Rpt. 104-849, 2 (1996).



political friends seeking further business with the Federal Government, they chose the White House Travel Office.”<sup>422</sup>

These allegations were not supported by the evidence. The FBI and the Department of Justice determined that there was substantial evidence of financial mismanagement in the travel office, including the deposit of approximately \$54,000 in checks and \$14,000 in cash into the travel office director’s personal bank account.<sup>423</sup> This finding was supported by an independent review conducted by KPMG Peat Marwick.<sup>424</sup> The allegations were also reviewed by a federal grand jury, which found sufficient evidence to indict the travel office director.<sup>425</sup>

- *The Allegation That the White House Collected FBI Files for an “Enemies List.”* During the Filegate investigation, many Republicans alleged that the White House acquired the FBI files of former employees to create a list of political enemies. The Committee report, for example, found that “many of the individuals were political appointees of the Reagan and Bush administrations. This leads to the possibility that the Clinton administration was attempting to prepare a political ‘hit list’ or ‘enemies list’ with the most sensitive and private information.”<sup>426</sup> Rep. Dan Burton charged that one “could only deduct [sic] that they were going to be used for political purposes.”<sup>427</sup> Despite these allegations and four days of hearings on the FBI file issue, however, the Committee uncovered no evidence that these files were ever used for any political purpose.

- *The Allegation That Vince Foster Was Murdered.* In a floor speech on November 20, 1995, Chairman Burton revealed that he and other Republican members had conducted their own investigation into the death of Deputy White House Counsel Vincent Foster. According to Chairman Burton, this investigation raised the possibility that Mr. Foster had been murdered.<sup>428</sup> In fact, however, independent investigations by the Federal Park Police, Independent Counsel Robert Fiske, and Independent Counsel Kenneth Starr all concluded that there was no evidence of any wrongdoing in connection with Mr. Foster’s tragic suicide.<sup>429</sup>

Unfortunately, these unsubstantiated allegations have been given legitimacy by the irresponsible use of the congressional oversight process. As Rep. Waxman stated at one Committee hearing, “Our committee has been the leader in creating a new species of

<sup>422</sup> House Committee on Government Reform and Oversight, Hearings on White House Travel Office, 105th Cong., 1st Sess., 645 (Oct. 25, 1995).

<sup>423</sup> See Committee on Government Reform and Oversight, Investigation of the White House Travel Office Firings and Related Matters, 104th Cong., 2d Sess., H. Rpt. 104-849, 894 (1996) (reprinted Department of Justice prosecution memorandum).

<sup>424</sup> Letter from KPMG Peat Marwick to Associate Counsel to the President William H. Kennedy III (May 17, 1993) (reprinted in Committee hearing transcript, 631 (Oct. 25, 1995)).

<sup>425</sup> Committee on Government Reform and Oversight, Investigation of the White House Travel Office Firings and Related Matters, 104th Cong., 2d Sess., H. Rpt. 104-849, 924 (1996) (reprinted indictment).

<sup>426</sup> Committee on Government Reform and Oversight, Investigation of the White House and Department of Justice on Security of FBI Background Investigation Files, 104th Cong., 2d Sess., H. Rpt. 104-862, 16 (1996).

<sup>427</sup> House Committee on Government Reform and Oversight, Hearings on Security of FBI Background Files, 105th Cong., 2d Sess., 44 (June 19, 1996).

<sup>428</sup> Congressional Record, H13636 (Nov. 20, 1995).

<sup>429</sup> Attention Conspiracy Theorists! Hartford Courant (July 18, 1997); Fiske Won’t Bring Charges Over High-Level Contacts; Report Clears Ways for Hill Hearing on Whitewater, Washington Post (July 1, 1994); Starr Report Rules Out Foul Play in Foster Death, Los Angeles Times (Feb. 23, 1997).

congressional oversight. The basis for an accusation is no longer limited to whether something actually happened; the new standard is that it could have happened. Then the burden shifts to the accused to disprove it.”<sup>430</sup>

### III. THE MAJORITY REPORT CONTAINS LITTLE NEW INFORMATION

#### A. INTRODUCTION

After two years and \$7.4 million, the Committee on Government Reform and Oversight has issued a lengthy majority report that includes virtually no new information.

At the outset of the investigation, Chairman Burton predicted that this investigation would be “much bigger than Watergate was”<sup>431</sup> and alleged that the Committee’s investigation would disclose a “massive scheme of funneling millions of dollars in foreign money into the U.S. electoral system” that was orchestrated by the “Chinese Government at the highest levels.”<sup>432</sup> Two years later—after issuing 1,285 information requests, taking 161 depositions, and receiving 1.5 million pages of documents—Chairman Burton is unable to substantiate these allegations. Indeed, the majority report does not demonstrate that even one official of the White House knowingly participated in a scheme to solicit illegal campaign contributions.

The majority report’s only fresh allegation is its claim that the DNC and other Democratic organizations have accepted \$1.8 million in additional questionable contributions. Of the \$1.8 million, however, only a small portion seems genuinely suspect. The genuinely suspect DNC contributions are far less than the \$1.1 million in suspect contributions from foreign sources that Republicans have yet to return.

The majority blames its lack of success on alleged White House and DNC stonewalling. But while the White House and DNC may have been slow in producing some documents, the majority ultimately received every White House and DNC document and took every deposition of White House or DNC officials that the majority sought.

The following discussion is the minority’s evaluation of the majority report. The primary allegations in each chapter in the majority report are contrasted with the facts in the record before the Committee.

#### B. EVALUATION OF CHAPTER II OF THE MAJORITY REPORT

*Majority Allegation:* One hundred and twenty witnesses have invoked their Fifth Amendment rights, fled the country, or otherwise refused to cooperate with this Committee.<sup>433</sup>

*The Facts:* It is true that many witnesses refused to cooperate with the Committee’s investigation, but the majority’s estimate overstates the numbers. For example, the majority’s list includes

<sup>430</sup>House Committee on Government Reform and Oversight, Hearings on the Department of the Interior’s Denial of the Wisconsin Chippewa’s Casino Applications, 105th Cong. 2d Sess., 10 (Jan. 21, 22, 28, and 29, 1998).

<sup>431</sup>PBS’s The NewsHour with Jim Lehrer, (Feb. 25, 1997).

<sup>432</sup>Chairman Burton, Congressional Record, H4097 (June 20, 1997).

<sup>433</sup>The list of these 120 witnesses can be found on the majority’s webpage at <http://www.house.gov/reform/oversight/finance/fled.htm>.

14 witnesses who have cooperated fully with congressional investigations after receiving immunity from the Congress. Seven of these witnesses on the list—David Wang, Joseph Landon, Manlin Fong, Kent La, Irene Wu, Larry Wong, and Nancy Lee—were granted immunity by this Committee,<sup>434</sup> and they have provided sworn testimony to this Committee.<sup>435</sup> Seven other witnesses on the list—Zie Pan Huang,<sup>436</sup> Siuw Moi Lian, Man Ya Shih, Yi Chu, Man Ho, Huetsan Huang, and Yue Chu—were granted immunity by and cooperated with the Senate.<sup>437</sup> At least three other witnesses the majority claims failed to cooperate have, in fact, been interviewed by the Senate Governmental Affairs Committee or this Committee, including Johnny Chung,<sup>438</sup> Jessica Elnitiarta,<sup>439</sup> and Charlie Chiang.

The majority lists 18 individuals as having “left the country.” This is also misleading. In fact, some of those people actually live abroad for legitimate reasons and did not leave the country to avoid the campaign finance inquiry. For example, Ming Chen, a Beijing restaurateur, appears on the majority list even though he has resided abroad since before the campaign finance controversy began.<sup>440</sup>

As another example, the majority lists Lei Chu, Laureen Elnitiarta, Sandra Elnitiarta, Sundari Elnitiarta, Yopie Elnitiarta, Didi Kurniawan, John H.K. Lee, Felix Ma, Agus Setiawan, Subandi Tanuwidjaja, Suryanti Tanuwidjaja, Susanto Tanuwidjaja, and Dewi Tirto as having left the country. While these individuals apparently reside outside of the United States, there is no evidence that they have left the country to flee this Committee’s investigation. In fact, according to deposition testimony, many reside abroad for legitimate business purposes.<sup>441</sup>

The majority implies that the inability to interview or depose the listed individuals has severely hampered its investigation. There is

<sup>434</sup> See House Committee on Government Reform and Oversight, Markup on Granting Congressional Immunity, 105th Cong., 2nd Sess. (May 13, 1998); House Committee on Government Reform and Oversight, Business Meeting, 105th Cong., 1st Sess. (Sept. 24, 1997).

<sup>435</sup> Deposition of David Wang, House Committee on Government Reform and Oversight (Oct. 6, 1997). All depositions referenced in this section, unless otherwise noted, were taken by the House Committee on Government Reform and Oversight. Deposition of Joseph Landon (Sept. 29, 1997); Deposition of Manlin Fong (Sept. 29, 1997); Deposition of Nancy Lee (July 29, 1998); Deposition of Kent La (July 22, 1998); Deposition of Irene Wu (July 28, 1998); Deposition of Larry Wong (July 27, 1998).

<sup>436</sup> The majority notes on its website that this witness was given immunity by the Senate. According to Senate hearing testimony, this witness’s name is actually Xiping Wang. Senate Governmental Affairs Committee, Hearing on Campaign Fund-raising, 105th Cong., 1st Sess. (July 29, 1997).

<sup>437</sup> Huetsan Huang, Siuw Moi Lian, Xiping Wang, and Yue Chu were given immunity by the Senate Governmental Affairs Committee on June 27, 1997. Donor Probe Veers Toward Bipartisanship, *Los Angeles Times* (June 28, 1997). Man Ho, Yi Chu, Su Jen Wu, and Man Ya Shih were given immunity in a Senate committee vote on July 23, 1997. 5 Granted Immunity in Donor Probe, *Los Angeles Times* (July 24, 1997). The deposition testimony of these witnesses is publicly available. See Deposition of Siuw Moi Lian, Senate Committee on Governmental Affairs (Aug. 20, 1997) (depositions taken by the Senate Committee on Governmental Affairs will hereafter be referred to as “Senate Deposition”); Senate Deposition of Huetsan Huang (Aug. 20, 1997); Senate Deposition of ManYa Shih (Aug. 20, 1997); Senate Deposition of Yi Chu (Aug. 7, 1997); Senate Deposition of Man Ho (Aug. 6, 1997); Senate Deposition of Yue Chu (July 9, 1997); Senate Deposition of Xiping Wang (July 9, 1997).

<sup>438</sup> Committee interview of Johnny Chung (Nov. 14, 1997).

<sup>439</sup> Senate Report, v. 1, 965, n.8.

<sup>440</sup> Yue Chu, Ming Chen’s wife, testified in the Senate that her husband has been employed in Beijing since October 1995. Senate Governmental Affairs Committee, Hearing on Campaign Fund-raising, 105th Cong., 1st Sess. (July 29, 1997).

<sup>441</sup> For example, three of Ted Sioeng’s children who appear on the list live abroad running the family business: Sandra Elnitiarta in Hong Kong; Laureen Elnitiarta in Jakarta; and Yopie Elnitiarta in China. Deposition of Robert Prins, 96 (Jan. 27, 1998).

little evidence, however, that many of the 120 witnesses would have any significant information to contribute. The majority claimed that four of the immunized witnesses—Irene Wu, Nancy Lee, Larry Wong, and Kent La—had essential information,<sup>442</sup> but when their depositions were taken, the Committee learned that they had virtually no significant information.<sup>443</sup> Many of the other witnesses listed by the majority are also likely to be unimportant. For example, 11 individuals listed by the majority are Buddhist nuns who were reimbursed for campaign contributions they made to the DNC. Three of these nuns<sup>444</sup> testified before the Senate. The other eight<sup>445</sup> would have no new information about the conduit scheme in which they unwittingly participated.<sup>446</sup>

*Majority Allegation:* The White House has intentionally sought to delay this Committee's investigation by refusing to turn over documents and by asserting frivolous privileges.

*The Facts:* While it is true that there are instances in which the White House has been slow to turn over materials subpoenaed by this Committee, such as the videotapes made by the White House Communications Agency, there is no evidence that the White House has intentionally sought to obstruct the Committee's investigation. To the contrary, the White House has produced over 70,000 pages of documents to the Committee; 49 present and former White House employees and volunteers have provided deposition testimony to this Committee;<sup>447</sup> and nine present and past White House employees have testified publicly at Committee hearings.<sup>448</sup> According to a GAO survey, White House personnel spent a total of 55,106 hours responding to congressional campaign finance investigations at a cost of over \$2 million dollars.<sup>449</sup>

There are currently no outstanding disputes over document production issues between the White House and this Committee. Thus, contrary to the majority's claim of obstruction, the majority has, in fact, received every document it sought. Moreover, contrary to the

<sup>442</sup> See, e.g., House Committee on Government Reform and Oversight Opening Statement by Chairman Burton, Business Meeting (June 23, 1998); Opening Statement by Chairman Burton, House Committee on Government Reform and Oversight, Business Meeting (Apr. 23, 1998).

<sup>443</sup> See Part II.F of this report.

<sup>444</sup> Man Ho; Man Ya Shih; and Yi Chu.

<sup>445</sup> Seow Fong Ooi; Hsiu Chu Lin; Jie Chi Rung Wang; Judy Hsu; Jie Su Hsiao; Hsiu Juan Tseng; Hsin Chen Shih; Yumei Yang.

<sup>446</sup> According to Michael Madigan, Senator Thompson's chief counsel during the Senate campaign finance investigation, the three nuns who testified were the nuns who "would be the best able to tell the story as to what happened that day at the Apr. 29, 1996 fundraiser." Senate Governmental Affairs Committee, Hearing on Immunity for Witnesses in Hearings on Campaign Fund-Raising, 105th Cong., 1st Sess. (July 18, 1997).

<sup>447</sup> Loretta T. Avent; Brian Bailey; Mark Bartholomew; Charles Benjamin; Jackie Bellanti; Erskine Bowles; Lanny Breuer; Jerry Carlsen; Kelly Ann Crawford; Jim Dorskind; Charles Duncan; Donald Dunn; John Emerson; Janice Enright; Karen Hancox; Karl Heissner; Harold Ickes; Michael Imbroscio; Ben Johnson; Yusuf Khapra; Tracy LaBrecque-Davis; Phil Lader; Evelyn Lieberman; Bruce Lindsey; Ranelle Lopez; Mack McLarty; Cheryl D. Mills; Bob Nash; Dimitri Nionakis; Jennifer O'Connor; Alice Pushkar; Jack Quinn; Gina Ratliffe; Frank Reeder; Evan Ryan; Michael Schmidt; Marsha Scott; Joseph Simmons; Doug Sosnik; Ann Stock; David Strauss; Alan Sullivan; Patsy Thomasson; Jodie R. Torkelson; Laura Tayman; Erich Vaden; Kim Widdess; Margaret Williams; James B. Wright.

<sup>448</sup> Lanny Breuer; Kelly Crawford; Brooke Darby; Nancy Hernreich; Cheryl D. Mills; Dimitri Nionakis; Charles F.C. Ruff; Robert Suettinger; Margaret Williams.

<sup>449</sup> General Accounting Office, Survey of Executive Branch Cost to Respond to Congressional Campaign Finance Inquiries, Enclosure 1 (1998).

majority report, the White House never invoked executive privilege over either documents or testimony.<sup>450</sup>

*Majority Allegation:* The Democratic National Committee's document production has been slow and disorganized, thus hampering the Committee's investigation.

*The Facts:* The DNC produced an extraordinary amount of information to Congress. In the last two years, the DNC received subpoenas from six separate congressional committees. To respond to the requests from campaign finance investigations, the DNC spent over \$6 million on document production, as well as an additional \$8.8 million on legal fees.<sup>451</sup> The DNC examined more than nine million pages of documents,<sup>452</sup> and produced over 600,000 pages of documents to the Committee, including some of the DNC's most sensitive documents such as donor lists. Moreover, 24 current and former DNC employees provided either deposition or hearing testimony to this Committee.<sup>453</sup>

This Committee's document requests to the DNC were particularly burdensome. The Committee's first subpoena alone included 69 different requests with more than 290 different subparts and demanded that the DNC produce in less than three weeks all documents on these subjects from time periods dating as far back as 1991.<sup>454</sup> The Committee also served five different sets of interrogatories on the DNC, all with similarly short and arbitrary deadlines.<sup>455</sup> For example, the Committee's fifth set of interrogatories included approximately 572 different inquiries and document requests.<sup>456</sup>

In contrast to the inordinate burden placed on the DNC by Committee subpoenas, interrogatories, and document requests, the Republican National Committee received only a single, narrowly drafted document request from the Committee.<sup>457</sup> This resulted in the production of only 18,695 pages of documents.

### C. EVALUATION OF CHAPTER III OF THE MAJORITY REPORT

The majority report purports to identify \$1.8 million in "illegal" or "suspect" contributions that it asserts should be disgorged by the DNC and various Democratic state parties. As detailed below, the

<sup>450</sup> The issue of executive privilege did arise during Bruce Lindsey's deposition when Mr. Lindsey was asked about a conversation he had had with the President. See Deposition of Bruce Lindsey, 53-55 (Sept. 8, 1997). During the deposition, Mr. Lindsey telephoned White House Counsel Charles Ruff, who advised Mr. Lindsey not to answer the question at that time. The White House later determined that it would not invoke executive privilege in this matter. When the Committee continued Mr. Lindsey's deposition, he answered all of the Committee's questions and did not assert executive privilege. See Deposition of Bruce Lindsey, 3-12 (Apr. 29, 1998).

<sup>451</sup> Minority staff phone interview of Paul Palmer (Debevoise & Plimpton) (Sept. 23, 1998).

<sup>452</sup> Letter from Judah Best to Chairman Burton (July 23, 1997). This document and other documents related to this subsection are attached to this report as Exhibit 7.

<sup>453</sup> Truman Arnold; Joseph Birkenstock; Ann Brazier; Cheri Carter; Alejandra Castillo; Bryan Daines; Al Hurst; Carol Khare; Susan Lavine; Richard Mays; David Mercer; Minyon Moore; Melissa Moss; Kimberly Ray; Linda Rotunno; Joseph Sandler; Ceandra Scott; Lottie Shackelford; Eric Sildon; Karen Sternfeld; Brooke Stroud; Richard Sullivan; Ari Swiller; and B.J. Thornberry.

<sup>454</sup> Subpoena from the House Committee on Government Reform and Oversight to the Democratic National Committee (Mar. 4, 1997).

<sup>455</sup> See Interrogatories from the House Committee on Government Reform and Oversight to the Democratic National Committee (July 15, 1998); Interrogatories to the Democratic National Committee (June 23, 1998); Interrogatories to the Democratic National Committee (Feb. 12, 1998); Interrogatories to the Democratic National Committee (Oct. 6, 1997); Interrogatories to the Democratic National Committee (Sept. 8, 1997).

<sup>456</sup> Interrogatories from the House Committee on Government Reform and Oversight to the Democratic National Committee (June 23, 1998).

<sup>457</sup> Letter from Chairman Burton to Mike Grebe (RNC general counsel) (June 6, 1997).

majority's primary legal theory has been undermined by a recent federal court opinion, and the majority's \$1.8 million estimate is substantially inflated. Even under the majority's legal theory, only a small portion of the \$1.8 million seems genuinely suspect. These possibly suspect DNC contributions are far less than the \$1.1 million in suspect contributions from foreign sources that the RNC has yet to return.

*Majority Allegation:* The DNC consistently fails to return inappropriate contributions.

*The Facts:* The DNC has returned contributions when it has had a good faith basis to believe that the contributions are illegal or otherwise inappropriate. In fact, the DNC returned over \$3 million in suspect contributions received during the 1996 election cycle. The DNC returned over \$1.2 million because either the DNC determined after its own internal review of the contributions that it lacked sufficient information to evaluate the propriety of the contribution or the DNC considered the contribution to be inappropriate.<sup>458</sup> For example, the DNC refunded \$366,000 in soft money contributions from Johnny Chung and companies associated with Mr. Chung and \$253,000 from Pauline Kanchanalak long before the Justice Department began to investigate either Mr. Chung or Ms. Kanchanalak.<sup>459</sup>

*Majority Allegation:* It is illegal for the DNC to accept soft money contributions from foreign sources.

*The Facts:* The legal cornerstone of the majority's claim that the DNC must return \$1.8 million in suspect contributions is the majority's assertion that it is illegal to accept "soft money" contributions from foreign sources. A recent federal district court decision, *United States v. Trie*, however, has called this assertion into doubt.<sup>460</sup>

The court in *Trie* ruled that the restrictions in the Federal Election Campaign Act ("FECA") apply only to "hard money." "Hard money" is money that has been donated exclusively to finance a federal election campaign and is subject to the provisions of FECA.<sup>461</sup> All other money donated to a political party is known as "soft money." Soft money is deposited by a political party in a "non-federal" account and can be used to pay for state and local campaigns, as well as party building activities and generic issue advertising.<sup>462</sup> According to the *Trie* decision, soft money donations are not subject to FECA's annual contribution limits or to FECA's other prohibitions, including its prohibition on foreign contributions and conduit contributions.<sup>463</sup>

The overwhelming majority of the \$1.8 million identified in the majority report as suspect foreign contributions is soft money, not hard money.<sup>464</sup> Thus, if the holding in the *Trie* decision is correct,

<sup>458</sup> Press Release, DNC Refunds Contributions, Democratic National Committee (June 27, 1997). This document and other documents related to this subsection are attached to this report as Exhibit 8. As explained in Part V of this report, the minority members of the Committee believe that the campaign finance laws should be reformed in order to render foreign soft money illegal.

<sup>459</sup> *Id.*

<sup>460</sup> *United States v. Trie*, Crim. No. 98-0029, Slip. Op. (D.D.C. Oct. 9, 1998).

<sup>461</sup> *United States v. Hsia*, Crim. No. 98-0057, Slip. Op. (D.D.C. Sept. 10, 1998).

<sup>462</sup> *Id.*

<sup>463</sup> *United States v. Trie*, Crim. No. 98-0029, Slip. Op. (D.D.C. Oct. 9, 1998).

<sup>464</sup> Minority staff interview of Joseph Sandler (DNC general counsel) (Oct. 20, 1998).

most of the DNC contributions that the majority asserts should be returned are in fact legal.

*Majority Allegation:* The DNC has retained \$1.8 million in contributions from foreign sources.

*The Facts:* Even if the majority's legal theory is correct, its conclusion that the DNC should return \$1.8 million is unfounded. There is simply insufficient factual evidence to call most of the contributions identified by the majority into question.

Examples of specific contributions that the majority contends should be returned are discussed below.

*1992 Contributions from James and Aileen Riady.* The majority states that \$450,000 in contributions made by James and Aileen Riady during the 1992 election cycle are "suspect" and should be returned. This \$450,000 represents 25% of all the contributions the majority argues should be returned or disgorged. As the majority report concedes, however, James and Aileen Riady "were permanent residents at the time of their contributions."<sup>465</sup> They were therefore legally entitled to contribute to political campaigns. Section 441e of FECA, which prohibits contributions from "foreign nationals," specifically excludes persons lawfully admitted as "permanent residents" from the definition of "foreign national."<sup>466</sup> Thus, U.S. "permanent residents" like the Riadys could lawfully make campaign contributions to the DNC in 1992.

The majority argues that instead of following the provision of FECA that allows permanent residents to contribute, the DNC should be governed by the definition of a different term, "foreign principal," which is defined in a federal law governing the registration of "foreign propagandists." This is an argument that has never been adopted by a court or by the Federal Election Commission.

*1992 Contributions from John and Jane Huang.* The majority asserts that John Huang and his wife Jane contributed \$35,800 in "suspect" monies to the DNC, the DSCC, and a Democratic state party in 1992. The majority has no direct evidence suggesting that the Huangs' 1992 contributions are illegal. Instead, the majority argues that since Mr. Huang is under investigation for his role in soliciting potentially improper contributions in the 1996 elections, the DNC must return contributions made by Mr. Huang and his wife in prior election cycles.

This reasoning is not persuasive. Mr. and Mrs. Huang were American citizens with significant assets at the time their 1992 contributions were made.<sup>467</sup> Mr. Huang has not been convicted of any illegal activities. The fact that Mr. Huang is under investigation for his role in raising money in the 1996 campaign does not prove that contributions he and his wife made four years earlier are illegal.

*Contributions from Kent La.* The majority's assertion that the DNC should return a \$50,000 contribution from Kent La, who is

<sup>465</sup> Committee on Government Reform and Oversight, Investigation of Political Fundraising and Proprieties and Possible Violations of Law, 105th Cong., 2d Sess. at Ch. III (1998).

<sup>466</sup> 2 U.S.C. § 441e(b)(2). FECA's definition of "permanent resident" is the same as "permanent resident" is defined under the provisions of the United States Code governing immigration and nationality. For immigration and naturalization purposes, a "permanent resident" is defined as: "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. § 1101(a)(20).

<sup>467</sup> For Huang, a Changed Lifestyle, Los Angeles Times (Aug. 3, 1997).

president of a Los Angeles-based import company, is simply unfair. The majority has selectively and unfairly cited only certain evidence to conclude that Mr. La illegally contributed to the DNC. This conclusion—and the evidence on which it is based—are specifically refuted in Mr. La's sworn deposition, which the majority knows cannot be released under an agreement with the Department of Justice.

*Contributions from the Sioeng Family.* The majority report states that the DNC should return \$300,000 in contributions to the DNC made by relatives of Ted Sioeng and businesses owned by members of the Sioeng family. As the majority report concedes, each member of the Sioeng family who contributed to the DNC is a legal permanent resident who was lawfully permitted to make the contribution. The family is wealthy, has substantial business interests in the United States, and appears to possess sufficient assets to make each of the contributions.<sup>468</sup> Moreover, the majority is applying a double standard to contributions from the Sioeng family. The majority asserts that the DNC should return its contributions from Mr. Sioeng's relatives and Sioeng-related businesses, but finds nothing improper with the \$50,000 contribution that a Sioeng-related company gave to the National Policy Forum, a subsidiary of the RNC.<sup>469</sup>

*Contributions from Lippo Employees.* The majority labels as "suspect" \$160,000 in contributions made to the DNC in 1992 by various American employees of companies affiliated with the Lippo Group and those employees' spouses.<sup>470</sup> In each instance, the nub of the majority's analysis is that: (1) each of the individuals is described as a "Lippo Executive"; and (2) the majority cannot identify the ultimate source of the funds used to make the contributions. Employment by the Lippo Group, however, does not disqualify an American citizen from making a political contribution.

*Contributions from Pauline Kanchanalak and Duagnet Kronenberg.* The majority states that \$374,000 in contributions to Democrats from Pauline Kanchanalak and Duagnet Kronenberg should be returned. What the majority neglects to mention, however, is that most of this money has already been returned or, in the case of certain state parties, has already been committed to be returned. The DNC refunded \$253,500 to Ms. Kanchanalak in November 1996, when news of possible campaign fundraising improprieties appeared. The DNC returned \$114,000 to Ms. Kronenberg in July 1998 following her indictment.<sup>471</sup> Of the \$290,000 contributed to state Democratic parties, most has already been returned, while the remainder is in the process of being returned.<sup>472</sup>

*Contributions That Warrant Further Investigation.* About 5 percent of the contributions identified in the majority report do appear to be questionable. While some of these contributions may be legal

<sup>468</sup> See discussion at Part III.D.4 of this report.

<sup>469</sup> Sioeng family contributions to Republicans are discussed further in Part IV.B.3 and Part IV.B.4.

<sup>470</sup> The individuals accused by virtue of their association with the Lippo Group are: Joseph and Donna Chiang; Ricor and Brenda Da Silveira; David and Christina Yeh; Felix and Mary Ma; and Joseph Sund.

<sup>471</sup> DNC Returns Third Contribution Linked to Fired Fund-raiser, Minneapolis-St. Paul Star-Tribune (Nov. 21, 1996); Michael Fletcher and Thomas Edsall, DNC to Return \$100,000, Washington Post (July 21, 1998).

<sup>472</sup> Minority staff interview of Joseph Sandler (DNC general counsel) (Oct. 7, 1998).



under the *Trie* decision, these contributions warrant additional scrutiny by the DNC in light of the evidence presented in the majority report. These contributions include the contributions of Lei Chu, J & M International (Jack Ho), Chee Kein Koh, Hsiao Jie Su, Sy Zuan Pan, and the American Great Ground Group.

*Majority Allegation:* The Republican party has returned all suspect foreign contributions it has received.

*The Facts:* Contrary to the majority's assertion, the Republican party has not returned all suspect foreign contributions. In fact, of the \$2.8 million in foreign contributions accepted by Republicans, more than \$1.1 million has not been returned. Suspect foreign funds that Republican campaign organizations have not returned include:

- \$782,460 of a \$2.1 million contribution from Hong Kong businessman Ambrous Young to the National Policy Forum (NPF), a subsidiary of the RNC;
- a \$25,000 contribution from the Pacific Cultural Foundation, which is affiliated with the Taiwanese government, to the NPF;
- \$95,000 of \$205,000 in contributions from German citizen Thomas Kramer to the Florida Republican party;
- \$215,000 of \$500,000 in foreign contributions funneled to the RNC through Michael Kojima.

In addition to these suspect foreign contributions, the RNC has not returned a \$50,000 contribution by a Sioeng family company to the NPF. Using the standards the Chairman has applied to the DNC, this contribution should also be returned.

The evidence that Republicans accepted foreign contributions is discussed in detail in Part IV.B of this report.

#### D. EVALUATION OF CHAPTER IV OF THE MAJORITY REPORT

##### *1. Allegations Relating to the Riady Family and John Huang*

The discussion of the Riady family and John Huang in the majority report largely rehashes, without adding significant new evidence, the allegations made against the Riadys and John Huang two years ago when the Committee's investigation first began. Despite extensive efforts, the Committee has uncovered no significant evidence of wrongdoing on the part of the Riady family or John Huang.

*Majority Allegation:* The Clinton administration changed major U.S. policies to benefit the Riadys.

*The Facts:* Without evidentiary support, the majority reaches the conclusion that the Riadys may have influenced U.S. policies, such as "MFN . . . and access to Vietnam."

In fact, however, the Clinton administration's decision to grant most-favored nation (MFN) status to China, which each year has been supported by congressional majorities, and to reopen diplomatic relations with Vietnam were based on important economic, national security, and foreign policy considerations. It may be true, as the majority notes, that "the ethnic-Chinese Riady family's business was very closely tied to the MFN trading privilege for China, and the development of the Asian markets generally." But this does not mean that the Riadys influenced the Administration's deci-

sions. There are many American corporations that support MFN and contribute soft money to both the Republican and Democratic parties, but that does not mean that the politicians who support MFN were illegally influenced by the corporation's donations.

*Majority Allegation:* There was impropriety in the Lippo Group's hiring of two officials who left the Administration.

*The Facts:* The majority provides an extensive discussion of the Lippo Group's hiring of Mark Middleton and Webster Hubbell—each of whom was hired under a consulting contract—but fails to describe how their hiring has any bearing on campaign fundraising improprieties. The majority report speculates that improper factors underlay the Lippo Group's hiring of Mr. Middleton and Mr. Hubbell. The evidence, however, suggests that the Lippo Group had legitimate business reasons to hire both individuals, and the majority has failed to produce any evidence demonstrating that the hires were improper.

A native Arkansan, Mr. Middleton became acquainted with the Riadys through family and friends well before the President Clinton was elected.<sup>473</sup> In 1992, Mr. Middleton worked on the Clinton campaign, and from 1992 to 1995 Mr. Middleton served as an aide to former White House Chief of Staff Mack McLarty.<sup>474</sup> One of his primary responsibilities was to serve as Mr. McLarty's liaison to the business community.<sup>475</sup> By the time Mr. Middleton left the Administration, he had developed contacts throughout Washington and Asia.<sup>476</sup> It is not surprising, and certainly not illegal, that the Lippo Group would hire a well-connected individual with whom the Riadys were previously acquainted.

Similarly, the majority has been unable to produce any evidence to support Chairman Burton's frequent allegations that the Lippo Group's hiring of Webster Hubbell was improper or illegal. From what the Committee has learned, it appears that the Riadys, like other Hubbell friends and associates, hired Mr. Hubbell in 1994 to perform legitimate contract work, rather than for some illegitimate purpose.<sup>477</sup>

Mr. Hubbell was a lawyer for the Riadys in the 1980s, and he represented their company very successfully in a multi-million dollar dispute. In the mid-1980s, James Riady was a permanent resident of the U.S. living in Little Rock and was president of a banking company, Worthen Bank International. Mr. Hubbell was a litigation partner at the Rose Law Firm in the same city. In 1985, Worthen lost over \$50 million in the collapse of a New Jersey-based government securities firm, Bevell, Bresler, & Schulman.<sup>478</sup> This

<sup>473</sup> James Riady was a prominent member of the Arkansas business community. In the 1980s, the Riadys teamed up with a prominent Arkansas investment firm Stephens, Inc. to purchase a Little Rock bank, Worthen Bank International. Mr. Middleton's brother Larry works for Stephens, Inc. *Blind Ambition*, National Journal (June 7, 1997); see also Deposition of Douglas Buford, 64 (Oct 23, 1997) (testimony that Mark Middleton knew the Riadys).

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

<sup>476</sup> *Id.* ("Middleton was adept at parlaying his White House connections into private work . . . Middleton's White House job made for an easy transition into the private sector").

<sup>477</sup> Because key witnesses are unavailable, the Committee has not been able to determine precisely what work Mr. Hubbell was hired to perform for the Riadys or subsidiaries of their company, the Lippo Group. There are indications that Mr. Hubbell may have performed actual work for the Riadys in 1994; for example, he traveled to Indonesia at least once.

<sup>478</sup> See, e.g., Arkansas Bank May Have Lost \$52 Million: Losses from Bevell Failure Continue to Escalate, *American Banker* (Apr. 15, 1985).

was a devastating percentage of Worthen's capital, and it hired the Rose Law Firm to recollateralize the company and to recover the lost money through litigation.<sup>479</sup> Mr. Hubbell spearheaded the litigation, and eventually recovered nearly the full amount lost.<sup>480</sup> Given this history, it is not surprising that, after Mr. Hubbell resigned from the Justice Department and was looking for work, he would seek out the Riadys or that they would offer to contract with him for consulting work.

The testimony of Douglas Buford, an Arkansas lawyer who has represented the Lippo Group, sheds additional light on the hiring of Mr. Hubbell. Mr. Buford has been a friend of Mr. Hubbell's since the two were undergraduates and then law students together at the University of Arkansas.<sup>481</sup> Mr. Buford testified that Mr. Hubbell called him after leaving the Department of Justice, told Mr. Buford he was doing consulting work, and asked Mr. Buford whether the Lippo Group would be able to hire him.<sup>482</sup> Mr. Buford passed Mr. Hubbell's request on to the Lippo Group by calling John Huang (then a top Lippo employee in Los Angeles).<sup>483</sup> When Mr. Buford called Mr. Huang, he specifically said that he was communicating on behalf of Mr. Hubbell and not the White House or anyone else.<sup>484</sup>

*Majority Allegation:* John Huang engaged in suspicious political fundraising activities.

*The Facts:* The majority report describes in great detail the fundraising activities of John Huang during the 1996 election cycle, including an event-by-event description of Mr. Huang's attendance at various fundraising events with the President. Nearly all the information provided in the majority report, however, has been reported on extensively by the press, beginning two years ago. The report also details many of the foreign nationals who attended fundraising events with Mr. Huang. That information has also been extensively covered by the press,<sup>485</sup> and is also discussed in great detail in the report of the Senate Governmental Affairs Committee's campaign finance investigation, which was concluded at the beginning of this year.

There are some important questions about John Huang that need to be addressed. However, these questions are not answered in the majority report, and this Committee's record indicates it is not the right body to address them.

## 2. Allegations Relating to Charlie Trie

Between 1994 and 1996, Charlie Trie, his family, and his businesses contributed a total of \$220,000 to the DNC. As a volunteer fundraiser, Mr. Trie is also credited with raising approximately \$500,000. Following the appearance of press stories in the fall of

<sup>479</sup> Minority staff interview of C. Joseph Giroir (Apr. 30, 1997).

<sup>480</sup> See, e.g., Worthen Banking Corp.: Bank Receives \$2.1 Million from Bankruptcy Estate, Wall Street Journal (Dec. 11, 1989) (stating that Worthen had recovered a total of \$32.8 million from the bankrupt estate of Bevell, Bresler, and Schulman, as well as \$20 million from insurance companies); Minority staff interview of C. Joseph Giroir (Apr. 30, 1997).

<sup>481</sup> Deposition of Douglas Buford, 55.

<sup>482</sup> Id. at 51.

<sup>483</sup> Id.

<sup>484</sup> Id. at 53-54.

<sup>485</sup> See, e.g., What Clinton Knew: How a Push for New Fundraising Led to Foreign Access, Bad Money and Questionable Ties, Los Angeles Times (Dec. 21, 1997).

1996, these Trie-related contributions came under scrutiny by the DNC, the Department of Justice, and congressional investigators. Independently, as a result of an internal audit, the DNC decided to return all of Mr. Trie's contributions and many of the contributions raised by him.<sup>486</sup>

*Majority Allegation:* Charlie Trie made conduit contributions to the DNC.

*The Facts:* There is substantial evidence that Charlie Trie and Antonio Pan made conduit contributions. These allegations were first investigated and disclosed by the Senate Governmental Affairs Committee. In fact, the Senate held a hearing on this topic on July 29, 1997, during which Yue Chu and Xiping Wang, two acquaintances of Mr. Trie's, testified that they had made conduit contributions at the behest of one of Mr. Trie's employees, Keshi Zhan. Moreover, on January 28, 1998, the Department of Justice indicted Mr. Trie and Mr. Pan for defrauding the DNC and the Federal Election Commission through illegal contributions.<sup>487</sup>

The majority report adds little to what is already known about Mr. Trie's activities. The report contains no evidence indicating that the DNC engaged in a conspiracy with Trie to collect conduit campaign contributions. Moreover, the Justice Department indictment of Mr. Trie indicated that the DNC was a victim of Mr. Trie's fraudulent schemes, not a participant in them.<sup>488</sup>

*Majority Allegation:* Charlie Trie's political contributions were funded by the Chinese government.

*The Facts:* The Committee's investigation uncovered no information to support Chairman Burton's allegation that Charlie Trie made conduit contributions on behalf of the Chinese government.<sup>489</sup> The majority's main evidence that Mr. Trie might have been funneling money from the Chinese government is the fact that some of the money wired into Mr. Trie's accounts originated from accounts at the Bank of China.<sup>490</sup> These transfers are not new news and were investigated extensively by the Senate Governmental Affairs Committee.<sup>491</sup>

By themselves, these foreign bank funds do not demonstrate that Mr. Trie received money from the Chinese or any other foreign gov-

<sup>486</sup> Senate Committee on Governmental Affairs, Minority Views, Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, S. Rpt. No. 167, 105th Cong., 2d Sess., v. 6, 8687 (1998) (hereafter Senate Minority Report).

<sup>487</sup> Indictment, *United States v. Trie and Pan* (D.D.C. Jan. 28, 1998). This document and other documents related to Charlie Trie are attached to this report as Exhibit 9.

<sup>488</sup> Id. at 6 (Trie and Pan "[d]evise[d] and intend[ed] to devise a scheme and artifice to defraud the DNC and to obtain property from the DNC by means of false and fraudulent pretenses, representations and promises"); see also Senate Minority Report, at 5270 ("There is no evidence before the Committee that any DNC officials were knowingly involved in Trie's misdeeds").

<sup>489</sup> On June 20, 1997, Chairman Burton alleged that there was a "massive scheme . . . of funneling millions of dollars in foreign money into the U.S. electoral system" that may have been perpetrated by "the Chinese Government at the highest levels." Chairman Burton, Congressional Record, H4097 (June 20, 1997). The Chairman had earlier suggested that Charlie Trie was part of a "cast of characters" who might have put "America's national security . . . in jeopardy by foreign money that may have found its way into the Democratic National Committee's campaign coffers." Chairman Burton, Congressional Record, H1913 (Apr. 29, 1997). The Senate Minority Report found no evidence that Mr. Trie might have been working for the Chinese government. See Senate Minority Report, 270 ("The evidence before the Committee does not establish that the government of the People's Republic of China provided money to Trie or directed Trie's actions").

<sup>490</sup> Rep. Barr stated on a news program that "communist Chinese money was funneled into DNC coffers" through "Bank of China accounts in Macao through John Huang and David Wang." Transcript from CNN Crossfire (Dec. 3, 1997).

<sup>491</sup> Senate Majority Report, 2525-27; Senate Minority Report, 5272-73, 5293-94.

ernment; it is equally, if not more, likely that these funds came from an individual account holder at the Bank of China. As Rep. Barrett stated at a Committee hearing: "It is wonderful to put the innuendo on the table that . . . money came from the Bank of China, but that doesn't mean that it is necessarily Chinese government money. But that is what these hearings are. They are innuendo after innuendo."<sup>492</sup>

Although the Bank of China is owned by the Chinese government, the Bank's U.S. counsel explained: "The fact that a Chinese company is state-owned does not mean that it is state-run, and in the Bank's case, it has always strongly maintained its independent status and avoided political involvement, both in China and around the world."<sup>493</sup> The Bank has conducted business with major American corporations such as Visa International, Inc., Price Waterhouse, and Morgan Stanley. Moreover, "[m]ost U.S. firms with a presence in China routinely open an account with the Bank of China."<sup>494</sup> There is simply no reason to believe that an account at the Bank of China—even if the account is at the Beijing branch office—is substantially different from an account at Citibank or Chase Manhattan.

Manlin Fong, Mr. Trie's sister, was asked about the allegations that Mr. Trie was an agent of the Chinese government. She called the allegations "ridiculous."<sup>495</sup> She also explained that her brother would make a very unlikely spy: "Ninety percent of the time he left the house, he couldn't even find his key. He is not a spy material, I guarantee you."<sup>496</sup>

*Majority Allegation:* Charlie Trie's political contributions were funded by the Lippo Group.

*The Facts:* Sometime in 1995 or early 1996, approximately two hundred \$1,000 travelers checks (\$200,000 in total) were purchased from Bank Central Asia (BCA) in Jakarta, Indonesia.<sup>497</sup> The checks appear to have been purchased by someone associated with Charlie Trie and were deposited in numerous persons' accounts during the spring of 1996; some of the checks may have been used for conduit contributions.<sup>498</sup> The majority has suggested that Charlie Trie and Antonio Pan may have received this money from the Lippo Group.<sup>499</sup>

<sup>492</sup> House Committee on Government Reform and Oversight, Johnny Chung: His Unusual Access to the White House, His Political Donations and Related Matters, 105th Cong., 1st Sess. 86 (Nov. 13, 1997).

<sup>493</sup> Letter from Christopher Brady (counsel to Bank of China) to Christopher Lu (minority counsel) (Oct. 9, 1997).

<sup>494</sup> Letter from Barry Naughton (professor, Univ. of California, San Diego) to Rep. Waxman (Oct. 8, 1997).

<sup>495</sup> Deposition of Manlin Fong, 122 (Sept. 29, 1997).

<sup>496</sup> House Committee on Government Reform and Oversight, Hearing on Conduit Payments to the Democratic National Committee, 105th Cong., 1st Sess. 125 (Oct. 9, 1997).

<sup>497</sup> See Letter from Chairman Burton to Dibiyo Widodo (Indonesian chairman of police) (July 29, 1998).

<sup>498</sup> See Letter from Mark M. Richard (deputy asst. attorney general) to Chairman Burton (July 30, 1998).

<sup>499</sup> See Campaign Finance's Parallel Probes, Washington Post (Aug. 6, 1998) (Majority Staff Director Kevin Binger stated that the travelers checks suggest "the extent of cooperation between Trie and people at the Lippo Group"); GOP Probers Report \$50,000 in Illegal Donations to Democrats Via Trie, Washington Times (Aug. 5, 1998) (Chairman Burton stated that the travelers checks are "the first time that this committee has traced funds used for conduit contributions directly back to Indonesia"); Statement of Chairman Burton, Conduit Payments to the Democratic National Committee, 7 (Antonio Pan "is a rather mysterious figure who had ties to Charlie Trie, the Lippo Group, and John Huang").

Like the wire transfers from the Bank of China, however, there is no evidence that these travelers checks came from the Lippo Group or the Indonesian government. Indeed, there is no evidence to this point that the checks were even paid for with foreign funds. Presumably, any individual could walk into a Bank Central Asia branch—whether or not the individual had an account at the bank—and purchase travelers checks.

*Majority Allegation:* Charlie Trie was appointed to the Bingaman Commission to reward him for his fundraising.

*The Facts:* In the case of Mr. Trie's appointment to the Bingaman Commission, the Committee uncovered no evidence of any illegal or unethical activity. Rather, the depositions of persons involved in the appointment process established that Mr. Trie's appointment occurred for the same reasons that numerous other persons are named to presidential commissions: Mr. Trie appeared to fit the qualifications that the Administration was seeking; Mr. Trie was known to persons close to President Clinton; and Mr. Trie had long supported the President.

In past administrations, many prominent supporters and contributors of the President were appointed to advisory committees. For instance, during the Bush administration, dozens of "Team 100" members—individuals who contributed at least \$100,000 to the Republican National Committee—were appointed to commerce and trade panels.<sup>500</sup> At least six Team 100 members served on the President's Export Council, which advised the President on trade matters.<sup>501</sup> At least three others were appointed to the Advisory Committee for Trade and Policy Negotiations, which advised the United States Trade Representative.<sup>502</sup>

To support its theory about Charlie Trie, the majority relies almost exclusively on notes from its interviews of Steve Clemons, a former aide to Senator Bingaman, who formulated the idea for the Commission. What the majority report fails to note, however, is that: (1) Mr. Clemons himself publicly repudiated the statements attributed to him by the majority;<sup>503</sup> and (2) the statements that Mr. Clemons supposedly made during the majority's interviews are contradicted by more than ten witnesses who provided sworn testimony to this Committee.

All witnesses deposed by the Committee denied that the appointment was intended to reward Mr. Trie for his fundraising. The most important testimony on this matter came from Charles Duncan, associate director of the White House Office of Presidential Personnel (OPP), and Phyllis Jones, former assistant United States

<sup>500</sup> Bush's Ruling Class, Common Cause Magazine (April/May/June 1992).

<sup>501</sup> Id. These Team 100 members included: manufacturer Donald Bollinger; developer Max Fisher; investor Robert W. Johnson IV; financier Henry Travis; and corporate lawyer Gerald Parsky.

<sup>502</sup> These Team 100 members included: Brown-Forman CEO W.L. Lyons Brown; developer Trammell Crow; and Goodyear Chairman Stan Gault.

<sup>503</sup> After the majority's interview notes of Mr. Clemons were made public in February 1998, Mr. Clemons stated that "the notes have significant inaccuracies and misrepresentations about the important matters which were discussed." Statement of Steven C. Clemons (Feb. 25, 1998). Because the minority was not invited to the interviews of Mr. Clemons, it cannot confirm the accuracy of the majority's notes. The majority's decision to make the notes public also violates the spirit of an agreement reached with the Senate in February. See Letter from Rep. Waxman to Speaker Gingrich (Feb. 27, 1998). At that time, the majority had sought to call Mr. Clemons as a hearing witness but was prevented from doing so by Senator Lott and Senator Daschle. Although Chairman Burton said he agreed with the Senate's decision, his staff subsequently released its interview notes of Mr. Clemons.

Trade Representative for intergovernmental affairs and public liaison, both of whom were involved in the selection of commissioners. Mr. Duncan and Ms. Jones testified that Administration officials wanted to form a group of qualified commissioners that were diverse in their viewpoints, ethnicities and party affiliation.<sup>504</sup> Both testified that they had thought Mr. Trie was “qualified” for the position because he was both an Asian American and a small businessman who had experience in Asian trade.<sup>505</sup>

This Committee also deposed three friends of the President with whom Mr. Duncan spoke about Mr. Trie’s appointment: Bob Nash (OPP director); Ernest Green (investment banker and prominent recommender of minority candidates to the Administration); and Lottie Shackleford (an Arkansas resident and DNC official). All three of these deponents testified that there was nothing unusual about Mr. Trie’s appointment.<sup>506</sup>

*Majority Allegation:* Democratic contributor and fundraiser Ernest Green (1) may have made a \$50,000 contribution in February 1996 to assist Wang Jun, the head of a large Chinese conglomerate, in attending a White House coffee; (2) may have been reimbursed by Mr. Trie for this contribution; and (3) may have deposited this money into his bank accounts in a way to avoid filing currency transaction reports.

*The Facts:* Speculation is the sole basis for this allegation. The majority’s allegations about Mr. Green are unsubstantiated and appear calculated to impugn his reputation.

Mr. Green is a prominent figure in the civil rights community and a distinguished African American leader. As one of the “Little Rock Nine,” Mr. Green helped integrate Arkansas public schools in the 1950s.<sup>507</sup> In three days of sworn deposition testimony before both this Committee and the Senate, Mr. Green repeatedly denied the many allegations made in the majority report.<sup>508</sup> Although the majority discounts Mr. Green’s testimony, it offers no concrete evidence to the contrary.

The majority’s suggestion that Mr. Trie reimbursed Mr. Green for his \$50,000 contribution to the DNC in February 1996 has no

<sup>504</sup> See, e.g., Deposition of Phyllis Jones, 21–22 (Feb. 11, 1998) (USTR always tried to form committees with members from diverse backgrounds, including ethnicity and business size).

<sup>505</sup> Deposition of Charles Duncan, 90–91 (Aug. 29, 1997) (“I felt at that time Mr. Trie did have knowledge [of trade barriers with Asian countries]. . . . This President has been very strong on having an administration and appointments as diverse as America. Mr. Trie, I thought, added diversity to it, also. And I thought it was also important to have small business people on this commission, and Mr. Trie would have been a small business person”); Deposition of Phyllis Jones, 60 (“it was because he was a small business person and he was Asian American and that we needed some more Asian Americans on the committee, because in order to study about Asia you would think you would want to have some Asian Americans on there to help with that perspective”).

<sup>506</sup> See Deposition of Bob Nash, 91–92 (Sept. 4, 1997) (said he knew Mr. Trie was involved in the restaurant business, in international trade, and was “a very competent business person”); Deposition of Ernest Green, v.1, 127 (Dec. 17, 1997) (recalled recommending Mr. Trie to Mr. Duncan); Deposition of Lottie Shackleford, 51–53 (Apr. 14, 1998) (recalled saying something positive about Mr. Trie to Mr. Duncan).

<sup>507</sup> Along with the other members of the “Little Rock Nine,” Mr. Green was awarded a congressional gold medal, pursuant to a bill approved by the full House on Oct. 9, 1998. The bill had 302 co-sponsors, including 11 majority members of this Committee.

<sup>508</sup> See, e.g., Deposition of Ernest Green, v. 1, 296 (no connection between \$50,000 contribution and Wang Jun attendance at White House coffee); Senate Deposition of Ernest Green, 183 (June 18, 1997).

factual foundation.<sup>509</sup> The majority claims that Mr. Green made \$38,000 in “mysterious cash deposits,”<sup>510</sup> on top of \$11,500 he acknowledged receiving from Mr. Trie. Because this \$49,500 closely approximates the \$50,000 that Mr. Green contributed, the majority report jumps to the conclusion that the two are related.

In fact, the majority report overlooks several important facts. First, the \$38,000 in cash deposits identified by the majority is based on the majority’s arbitrary decision to analyze only deposits made between December 15, 1995, and February 28, 1996. When one examines Mr. Green’s bank account statements beyond this two and a half month window, one sees a consistent pattern of Mr. Green making large cash deposits.<sup>511</sup> The majority conveniently overlooks these deposits.

Second, Mr. Green is a prominent investment banker with Lehman Brothers and possesses ample assets to make his own campaign contributions. In 1995 alone, Mr. Green’s bonus was \$350,000.<sup>512</sup> The majority also overlooks the fact that five days before Mr. Green made his \$50,000 contribution, he received \$114,961.70 from Lehman Brothers as the first installment of his 1995 bonus.<sup>513</sup>

Finally, Mr. Green had a long history of contributing to political campaigns. In fact, Mr. Green was a political appointee in the Carter Administration, a managing trustee of the DNC, and a close friend of President Clinton.<sup>514</sup> Mr. Green also began contributing to the Democratic party and Democratic candidates well before he ever met Mr. Trie in the Fall of 1994. According to FEC records, Mr. Green’s history of making political contributions dates back to at least December 1979.

There is also no support for the allegation that Mr. Green structured cash deposits he made into his account in order to avoid filing currency transaction reports. Mr. Green denied this allegation during his deposition,<sup>515</sup> and the majority report presents no concrete evidence to the contrary.

### *3. Allegations Relating to Johnny Chung*

Johnny Chung, a Taiwanese-born American citizen, contributed \$366,000 to the Democratic National Committee during the 1996 election cycle, directly and through his California-based company Automated Intelligent Systems Inc. (AIS), a California-based fax broadcasting company.<sup>516</sup> In the mid-1990s, Mr. Chung actively began to expand his business interests to include ventures with business people from China and other Asian countries. Also in the mid-1990s, Mr. Chung began making political contributions, and he

<sup>509</sup> In his two depositions before this Committee, Mr. Green adamantly denied that he was ever reimbursed by anyone for any political contributions. See Deposition of Ernest Green, v. 2, 15, 18, 20, 23, 26, 30–31, 32, 76 (Sept. 25, 1998), Deposition of Ernest Green, v. 1, 222.

<sup>510</sup> In fact, there is nothing mysterious about these cash deposits. Mr. Green testified that, as a civil rights leader, he was paid to make many speeches during January 1996 (to commemorate the birthday of Martin Luther King, Jr.) and February 1996 (to commemorate Black History Month). Deposition of Ernest Green, vol. 2, 16–17.

<sup>511</sup> For example, in March 1996, Mr. Green made cash deposits of \$2,000, \$3,200, and \$2,000 into his NationsBank account.

<sup>512</sup> Deposition of Ernest Green, v. 1, 307.

<sup>513</sup> Deposition of Ernest Green, 195 (June 18, 1997).

<sup>514</sup> Deposition of Ernest Green, v. 1, 21, 25, 26.

<sup>515</sup> Id. at v. 2, 24, 30.

<sup>516</sup> See, e.g., Deposition of Nancy Lee, 21–22 (July 29, 1998).



began bringing his actual and prospective business partners to political events. In March 1998, Mr. Chung pled guilty to illegally contributing about \$28,000 to two Democratic political campaigns through his employees and their associates.

*Majority Allegation:* Johnny Chung made conduit contributions to the DNC.

*The Facts:* It is true that Mr. Chung broke the law on two occasions by using other persons as donors (or “conduits”) for his money. Through conduits, Mr. Chung donated about \$20,000 to Clinton/Gore ’96 and about \$8,000 to Senator Kerry’s campaign. However, it appears that the campaign committees that received these contributions had no knowledge that Mr. Chung was violating the law.

The Committee discovered no significant information about Mr. Chung’s conduit contributions that was not uncovered by the Department of Justice or by the press. On March 16, 1998, the Department of Justice filed a criminal information against Mr. Chung describing Mr. Chung’s conduit contributions to Clinton/Gore and Senator Kerry.<sup>517</sup> Mr. Chung pled guilty to the charges. The key facts charged in the criminal information were as follows.

- Mr. Chung came to a September 21, 1995, Clinton/Gore event with approximately twenty guests. The next day, in order to pay for his guests, Mr. Chung caused \$20,000 of his own money to be contributed to Clinton/Gore, disguised as \$1,000 checks from twenty separate people.<sup>518</sup>
- Mr. Chung instructed one of his employees, Irene Wu, to recruit conduit contributors by asking them to write individual checks for \$1,000 from their own accounts. Mr. Chung then directed that cash be withdrawn from his own account, and he had Ms. Wu reimburse each of the conduit contributors with \$1,000 in cash.<sup>519</sup>
- Mr. Chung then directed Ms. Wu to deliver the conduit checks to Clinton/Gore representatives.<sup>520</sup>
- Mr. Chung also made \$8,000 in conduit contributions to Senator Kerry’s campaign through his company’s employees in September 1996.<sup>521</sup>

Between March and August 1998—after Mr. Chung was charged by the Justice Department—the Committee deposed four people on the subject of the conduit contributions that Mr. Chung had been charged with and admitted. Two of these people—Kimberley Ray and Karen Sternfeld—were employees of the Clinton/Gore ’96 campaign at the time Mr. Chung made his conduit contributions.<sup>522</sup> Two others—Irene Wu and Nancy Lee—were employees of Mr. Chung at this time.<sup>523</sup> None of these witnesses added any significant information to the publicly reported accounts of what Mr. Chung did. The witnesses provided no evidence that Clinton/Gore

<sup>517</sup> Criminal information filed against Johnny Chung (C.D. Cal. Mar. 16, 1998). This exhibit is attached to this report as Exhibit 10.

<sup>518</sup> Id. at Count Three, para. 6–7.

<sup>519</sup> Id. at Count Three, para. 7–9.

<sup>520</sup> Id. at Count Three, para. 10.

<sup>521</sup> Id. at Count Three, para. 1–8.

<sup>522</sup> Deposition of Kimberly Ray (July 30, 1998); Deposition of Karen Sternfeld (Mar. 10, 1998).

<sup>523</sup> Deposition of Irene Wu (July 28, 1998); Deposition of Nancy Lee (July 29, 1998).

'96 or the DNC knew that these contributions were illegal. They also knew nothing about the source of Mr. Chung's money.

*Majority Allegation:* Johnny Chung had "unusual access" to the Clinton administration.

*The Facts:* Mr. Chung made approximately 50 visits to the White House. This is a level of access that would surprise and disturb most Americans. From 1994–1996, Mr. Chung was able to visit officials at the White House, the Department of Energy, the Department of Treasury, the Securities and Exchange Commission, and the Department of Education, as well as an official at the Federal Reserve Bank in New York.<sup>524</sup> Mr. Chung aggressively sought such visits, and in one case was persistent enough to cause an official to hang up the phone on him.<sup>525</sup>

There is, however, no evidence in the record suggesting that Mr. Chung received any government contracts or grants or asked for any changes in law or policy. Rather, Mr. Chung's visits to Administration offices were either photo opportunities or instances where Mr. Chung and guests received public information.<sup>526</sup> As one witness testified, it appeared that "he was showing off for the guests that he brought."<sup>527</sup>

Moreover, the record before the Committee establishes that Mr. Chung also had occasional access to high-ranking Republican officials. Photographs were presented to the Committee that showed Mr. Chung with Speaker Newt Gingrich, former Senator Bob Dole, New Jersey Governor Christine Whitman, California Governor Pete Wilson, Virginia Governor George Allen, and Illinois Governor Jim Edgar.<sup>528</sup>

*Majority Allegation:* Johnny Chung used foreign money to make political contributions.

*The Facts:* As discussed above, Johnny Chung has pled guilty to making almost \$30,000 in illegal conduit contributions. There is no evidence in the record to this point, however, linking these contributions to foreign sources.

Mr. Chung, *who is an American citizen*, also made over \$300,000 in contributions to the DNC. These contributions were returned by the DNC in early 1997, before the Committee began to seriously investigate Mr. Chung.<sup>529</sup> Mr. Chung's bank records show that on several occasions the funds used to cover these contributions were wired into his bank account from foreign banks.<sup>530</sup> The evidence in the record to this point, however, does not establish that these were foreign funds. If Mr. Chung legitimately earned the money

<sup>524</sup> Mr. Chung also appears to have arranged additional meetings at the Department of Commerce and with the U.S. Ambassador to China, which were not explored in detail in Committee depositions. A private citizen and Democratic activist helped Mr. Chung arrange these two meetings. See, e.g., Deposition of Lynn Cutler, 50–65, Exhibit 12 (Dec. 2, 1997).

<sup>525</sup> Deposition of Corlis Moody, 83 (Dec. 5, 1997).

<sup>526</sup> For example, Mr. Chung's half-hour meeting at the Securities and Exchange Commission was a routine one at which agency representatives provided information they routinely provide to the public in person and over the telephone. Deposition of Brian J. Lane, 18–19, 28–29 (Jan. 20, 1998).

<sup>527</sup> Deposition of Sandra Rinck, 67 (Sept. 3, 1998).

<sup>528</sup> House Committee on Government Reform and Oversight Hearings on Johnny Chung: His Unusual Access to the White House, His Political Donations, and Related Matters, 105th Cong., 1st Sess. 67–73 (Nov. 13, 14, 1997).

<sup>529</sup> DNC press release (June 27, 1997); Senate Majority Report, 783.

<sup>530</sup> Senate Majority Report, 786.

that was wired into his account, he would lawfully be able to contribute it.

*Majority Allegation:* Johnny Chung received money from Chao-Ying Liu, the daughter of a retired Chinese general, that was intended for political contributions.

*The Facts:* This allegation comes from press reports stating that in the course of cooperating with the Department of Justice prior to sentencing, Mr. Chung told the Justice Department that Ms. Liu gave him \$300,000 for campaign contributions.<sup>531</sup> The Committee has obtained no evidence to this point confirming Mr. Chung's assertions. To the contrary, when Mr. Chung and his attorney met with Committee members in November 1997, Mr. Chung provided an account of his activities that differs significantly from what he reportedly told the Department. Unfortunately, a confidentiality agreement that Mr. Chung has refused to waive prevents Committee members from discussing what Mr. Chung and his attorney told them in November 1997.<sup>532</sup>

The credibility of Mr. Chung's allegations should also be viewed in the context of his August 1997 claim that former Energy Secretary Hazel O'Leary conditioned a meeting with Mr. Chung on his willingness to make a \$25,000 contribution to one of her favorite charities. As discussed in Part II.H, subsequent investigations by the Attorney General and this Committee revealed that Mr. Chung's claim was erroneous.

*Majority Allegation:* DNC officials knew or should have known that Mr. Chung's contributions were suspect.

*The Facts:* Mr. Chung is an American citizen who ran a legitimate U.S. business. There was no reason for the DNC to be suspicious of the initial contributions he made in 1994. After Mr. Chung began to bring Chinese foreign nationals to DNC events, there were warning signals that the DNC should have recognized. For example, the DNC could have been more vigilant in examining the possible connection between Mr. Chung's \$50,000 contribution to the DNC in March 1995 and the foreign guests with whom he attended a presidential radio address that month.<sup>533</sup> There is no evidence in the record, however, indicating that the DNC affirmatively encouraged Mr. Chung to violate any federal campaign laws—or even had knowledge that he was violating these laws.

*Majority Allegation:* Johnny Chung may have committed immigration fraud.

*The Facts:* The majority report alleges that Mr. Chung may have defrauded the federal government with respect to immigration matters. The deposition testimony of Mr. Chung's assistant Irene Wu does provide limited support for this allegation. Ms. Wu testified that Mr. Chung set up the companies for three reasons: to make it easier for his Chinese partners to visit the U.S., to better enable them to eventually get residency, and to explore business opportu-

<sup>531</sup> See, e.g., Chung Alleges DNC South Illegal Funds: Justice Dept. Probe Enters New Phase, *Washington Post* (June 20, 1998).

<sup>532</sup> At a May 21, 1998, Committee meeting, Rep. Waxman offered a motion that the Chairman contact Mr. Chung and his attorney and ask them to waive the confidentiality agreement. The Committee approved this motion, but, after Mr. Chung's attorney was contacted, he stated that Mr. Chung refused to waive the confidentiality agreement.

<sup>533</sup> See Senate Majority Report, 786–79.

nities.<sup>534</sup> There is, however, no evidence that any of Mr. Chung's partners actually became U.S. citizens or permanent residents. Moreover, any sort of fraud on the INS, even if established, would appear to have no significant relationship to the Committee's campaign finance investigation. In fact, if Mr. Chung formed companies with Chinese nationals to help them with visas and eventual U.S. residence, that may explain why Mr. Chung had contact with and received money from these Chinese citizens.

#### *4. Allegations Relating to Ted Sioeng*

Ted Sioeng (also known as Sioeng San Wong) was a central figure in the campaign fundraising investigation because of his close ties to the Chinese government and the substantial contributions made by his family and businesses to the Democratic National Committee (DNC), the Republican-affiliated National Policy Forum ("NPF") and California Treasurer Matt Fong, who is also the Republican Senatorial nominee in California. Mr. Sioeng's relationship with Matt Fong and the NPF is dealt with in Part IV.B.4.

*Majority Allegation:* Ted Sioeng worked, and perhaps still works, on behalf of the Chinese government.

*The Facts:* According to press accounts, U.S. intelligence agencies have developed "credible" information that Mr. Sioeng "acted on behalf of China to influence U.S. elections with campaign contributions."<sup>535</sup> According to one account: "The FBI suspects the Chinese may have used Sioeng as a 'cutout'—a front man to make illegal contributions appear legitimate: the Feds traced the [Matt] Fong money from Chinese sources into Sioeng-controlled businesses."<sup>536</sup> Federal investigators have also "focus[ed] intensively on Sioeng's cigarette business and whether it might have been used as a conduit for Chinese government funds to U.S. political campaigns."<sup>537</sup> These press stories note, however, that there is "no information showing Sioeng, his family or companies received any benefit from political parties or officials as a result of their donations."<sup>538</sup>

While the record before the Committee does not refute these press reports, the record to this point also does not support the assertion that such close ties exist between Mr. Sioeng and the Chinese government. Similarly, the evidence uncovered by this Committee does not support the majority's assertion that Ted Sioeng "worked, and perhaps still works, on behalf of the Chinese government." During the course of its investigation into Ted Sioeng, the majority deposed 13 witnesses familiar with Mr. Sioeng's business and political activities. None of the 12 witnesses whose depositions have been made public provided testimony that supports the allegations that Mr. Sioeng is an agent of the Chinese government.<sup>539</sup>

<sup>534</sup> Deposition of Irene Wu, 220.

<sup>535</sup> Senate Panel is Briefed on China Probe Figure; Officials Say Evidence May Link L.A. Businessman to Election Plan, Washington Post (Sept. 12, 1997). Through his attorneys, Mr. Sioeng has adamantly denied these allegations. See Attorney Statement on Behalf of Jessica Elnitiarta and Ted Sioeng (May 23, 1997) ("Mr. Sioeng is not, and has not been, a political agent of the Chinese or any other government").

<sup>536</sup> The FBI Zeros in on Exactly How China Secretly Funneled Money into American Politics, Newsweek (May 19, 1997).

<sup>537</sup> Senate Panel is Briefed on China Probe Figure, Washington Post (Sept. 12, 1997).

<sup>538</sup> Id.

<sup>539</sup> The thirteenth witness is Kent La, a business associate of Mr. Sioeng. The Department of Justice has objected to releasing his deposition transcript.

Most of the witnesses deposed by the Committee had little relevant information about Mr. Sioeng or his business or political activities. To the extent that these witnesses had first-hand knowledge of Mr. Sioeng's activities, they testified as follows:

- No witness had any knowledge as to whether Mr. Sioeng or any member of his family was an agent of the Chinese government or was acting at the direction of the Chinese government.<sup>540</sup>
- No witness had any knowledge about Mr. Sioeng engaging, either directly or indirectly, in political lobbying efforts in the U.S. on behalf of the Chinese or any other government.<sup>541</sup>
- No witness had any knowledge about the Chinese government trying to funnel money into the U.S. through any of Mr. Sioeng's companies.<sup>542</sup>
- Several witnesses testified that Mr. Sioeng's desire to cultivate good relations with local Chinese government officials was driven by economic, and not political, reasons.<sup>543</sup> No witness thought that Mr. Sioeng's connections to the Chinese government were unusual for a businessman with substantial business interests in China.
- No witness questioned the legitimacy of Mr. Sioeng's businesses.<sup>544</sup>

Although Mr. Sioeng appears to have some relationships with Chinese government officials, the testimony suggests that these connections are at the local and provincial level, rather than at the national level. For instance, Johnny Ma, a sometime-business associate of Mr. Sioeng's, testified that Mr. Sioeng was an "honorary" advisor to two provinces but that such a connection was not unusual for an entrepreneur doing business in China.<sup>545</sup> As Mr. Ma explained, "[w]hoever has business there, almost everyone has some relationship with the government."<sup>546</sup>

Several witnesses contradicted the majority's allegation that Mr. Sioeng acted as an agent of the Chinese government. Cary Ching, the president of Grand National Bank, testified: "[I]t's kind of unthinkable for me personally to think [Sioeng] would act in the ca-

<sup>540</sup> See, e.g., Deposition of Cary Ching, 116 (Feb. 11, 1998); Deposition of Lily Wong, 44 (Feb. 11, 1998) (Wong said she would be "surprised to learn" that Mr. Sioeng worked for the Chinese government because "[h]e's a businessman and he's independently wealthy"); Deposition of Daniel Wong, 127-35 (Mar. 12, 1998); Deposition of Robert Prins, 93 (Jan. 27, 1998) ("Q: Do you have any reason to believe whatsoever that Mr. Sioeng is an agent of the Chinese government or any other government? A: No, I would have no reason"); Deposition of Haddi Kurniawan, 85 (Apr. 14, 1998); Deposition of Boa Bang Hunyh, 49 (Apr. 15, 1998); Deposition of Gary Locke, 65 (July 7, 1998).

<sup>541</sup> See, e.g., Deposition of Daniel Wong, 140 (Mar. 12, 1998); Deposition of Robert Prins, 96-97 (Jan. 27, 1998) ("I don't think Ted is that political. . . . I think Ted was looking out for how could he perhaps buy a future favor from [two Cambodian politicians], not from us").

<sup>542</sup> See, e.g., Deposition of Glenville Stuart, 119 (Feb. 18, 1998).

<sup>543</sup> See, e.g., Deposition of Daniel Wong, 126 (Mar. 12, 1998); Deposition of Robert Prins, 94 (Jan. 27, 1998) ("Q: Do you find Mr. Sioeng's support of the Beijing government unusual for a businessman who has substantial business interests in China? A: Not really").

<sup>544</sup> See, e.g., Deposition of Robert Prins, 93-94 (Jan. 27, 1998).

<sup>545</sup> Deposition of Johnny Ma, 71-72 (Feb. 12, 1998). Mr. Ma also testified that he thought Mr. Sioeng had a connection with the national government in Beijing because Mr. Sioeng "quite often traveled to Beijing" and "[o]therwise why would he travel to Beijing?" Id. at 87-88. Even assuming that only people with government connections travel to Beijing—a highly questionable assumption—Mr. Ma later conceded that he had no first-hand knowledge of Mr. Sioeng's relationship with the national government. Id., 104 ("Q: Do you have any firsthand knowledge . . . of his connection to the Beijing government? . . . A: No, I do not").

<sup>546</sup> Deposition of Johnny Ma, 72-73 (Feb. 12, 1998); see also Letter from N.T. Wang (senior research scholar at Columbia Univ.) to Rep. Waxman, Nov. 10, 1997 ("[S]ince China is still in a transitional period, communication with Chinese government officials is a routine business matter and is totally unrelated to a business person's ideological or political inclination"). This document and other documents related to Ted Sioeng are attached to this report as Exhibit 11.

capacity of an agent. . . . I would be very surprised for people as outspoken as Mr. Sioeng would serve best in the capacity of a secret agent.”<sup>547</sup> Glenville Stuart, a business associate, called these allegations “ridiculous” and “preposterous” and stated that “knowing [Sioeng], he would be a very poor agent.”<sup>548</sup> Daniel Wong, the former mayor of Cerritos, CA, was adamant in his belief that Mr. Sioeng was not a Chinese agent:

Ted Sioeng doesn’t campaign. He’s not doing any political thing. He doesn’t even speak English well enough to influence any senator or congressman. . . . That means that he was not working for the Chinese government as an agent, as a spy, like 007, to get the documents or important stuff. If anything, he was lobbying China for his own good.

Similarly, Johnny Ma testified: “I don’t think that Chinese Government would hire him as a spy or person like him because that would seem to be—Chinese Government would be quite stupid to hire him . . . [b]ecause, from my knowledge, it seem to me Mr. Sioeng’s intention was to try to make money off from Chinese Government, try to make money from China.”<sup>549</sup>

There also was no evidence to support the majority’s allegations that Mr. Sioeng organized charitable activities in the Los Angeles Asian American community at the behest of the Chinese consulate in Los Angeles. None of the witnesses deposed was able to provide first-hand testimony on this connection. However, several witnesses thought that Mr. Sioeng’s activities were not unusual for a businessman trying to cultivate business contacts in China. According to Daniel Wong, Mr. Sioeng, like other Chinese entrepreneurs, was motivated to undertake such charity efforts for economic reasons: “He was doing that so he gain his influence in these smaller or poorer state or provinces so they can get his business deal.”<sup>550</sup> Johnny Ma expressed a similar opinion: “Everybody wants to have some kind of relationship with the consulate so that they can go into China and to do business in China.”<sup>551</sup>

If indeed Mr. Sioeng does work for the Chinese government, the only high-level U.S. government official with whom he had a substantive policy discussion was Speaker Gingrich. As the majority report notes, Mr. Sioeng and the Speaker “talked generally about the relationship between the United States and the PRC” at a July 1996 meeting.<sup>552</sup> In contrast, there is no evidence that Mr. Sioeng had any comparable discussions with either President Clinton or Vice President Gore at any of the DNC functions that Mr. Sioeng attended.

*Majority Allegation:* Contributions made to the DNC by Ted Sioeng’s family and businesses are illegal because they were either funded from foreign sources or directed by Mr. Sioeng.

*The Facts:* In making these allegations, the majority is clearly applying a double standard. The majority asserts that the Sioeng-related contributions to the DNC are illegal and should be re-

<sup>547</sup> Deposition of Gary Ching, 116, 131–32 (Feb. 11, 1998).

<sup>548</sup> Deposition of Glenville Stuart, 118, (Feb. 18, 1998).

<sup>549</sup> Deposition of Johnny Ma, 79 (Feb. 12, 1998).

<sup>550</sup> Deposition of Daniel Wong, 36 (Mar. 12, 1998).

<sup>551</sup> Deposition of Johnny Ma, 94 (Feb. 12, 1998).

<sup>552</sup> Majority Report Chapter IV, Part D.

turned, but that the Sioeng-related contributions to the National Policy Forum, a subsidiary of the RNC, are lawful and need not be returned. In fact, the only Sioeng-related contribution that clearly came from a foreign source is the \$50,000 contribution that Mr. Sioeng personally gave to Matt Fong, when Mr. Fong was seeking to retire his campaign debt from his 1994 race to become California state treasurer. Mr. Sioeng's contributions to Republicans are discussed in detail in Part IV.B.4 of the minority report.

The Sioeng-related contributions to the DNC were made by: (1) Mr. Sioeng's daughter Jessica Elnitiarta, who is a legal resident and allowed to make campaign contributions; and (2) the family's U.S. companies, Panda Estates and Panda Industries, which are allowed to make soft money contributions. These contributions totaled \$250,000. There is no evidence in the record that demonstrates that any of these contributions were illegal.

The Sioeng family enterprise<sup>553</sup> has sizeable assets in the U.S., including several companies and a large hotel in Hollywood.<sup>554</sup> These companies and real estate holdings appear to generate more than enough income in the U.S. to support the \$150,000 in contributions made by Panda Industries and Panda Estates to the DNC in July 1996. Ms. Elnitiarta also apparently has substantial personal assets to support her \$100,000 contribution to the DNC in February 1996.<sup>555</sup> Indeed, one witness, Daniel Wong, testified he had no doubt that Ms. Elnitiarta and the companies made the political contributions with their own funds.<sup>556</sup> The majority speculates that money was transferred from overseas accounts into the Sioeng family's U.S. accounts for the purpose of making political contributions. These allegations, however, appear to be based on pure conjecture.

There is also no evidence to support the allegation that political contributions made by Ms. Elnitiarta or the family's companies were in fact directed by Mr. Sioeng. None of the depositions provided any evidence to support the allegation that Mr. Sioeng was directing the political contributions of either his daughter or the companies. To the contrary, according to the deponents, Ms. Elnitiarta, while only in her early thirties, is a competent businesswoman who ably handles the family businesses, including Panda Estates and Panda Industries.<sup>557</sup> She is responsible for the day-to-

<sup>553</sup> Robert Prins testified that four of Mr. Sioeng's five children are involved in the family's business, with each child handling operations in a different country. Deposition of Robert Prins, 96 (Jan. 27, 1998).

<sup>554</sup> According to one witness, Daniel Wong, Mr. Sioeng claimed to have \$3 billion in assets in 1992. Deposition of Daniel Wong, 46 (Mar. 12, 1998). Although that claim is probably an exaggeration, it is clear that Mr. Sioeng and his family have substantial assets.

<sup>555</sup> In 1994, Jessica Elnitiarta stated in a loan document that she had a net worth of \$8.3 million, with an annual income of \$200,000. Personal Financial Statement of Jessica Elnitiarta (July 26, 1994); see also Letter from Judah Best to Richard D. Bennett (Mar. 24, 1998) ("Additional inquiry has shown that both Ms. Elnitiarta and Panda Estates Investments Inc. have substantial assets in the United States"). Attorney Statement on Behalf of Jessica Elnitiarta and Ted Sioeng (May 23, 1997) ("All of [Elnitiarta's] contributions have been lawful and properly documented"); Deposition of Glenville Stuart, 120 (Feb. 18, 1998) (testified that he thought the Metropolitan Hotel, which is owned by the Sioeng family, was "profitable").

<sup>556</sup> Deposition of Daniel Wong, 115 (Mar. 12, 1998).

<sup>557</sup> Deposition of Matt Fong, v. 1, 63 (Mar. 2, 1998) (Sioeng "was very proud that his children were independent business owners and partners of his and they were operating their own enterprises; that Jessica ran a hotel . . ."); Deposition of Cary Ching, 118 (Feb. 11, 1998) (Jessica operates "pretty independently" of father); Deposition of Lily Wong, 77 (Feb. 11, 1998) (Jessica is in charge of Panda Estates); Deposition of Daniel Wong, 60 (Mar. 12, 1998) ("Q: It was your impression that [Jessica] was in charge of Ted Sioeng's business here in the U.S.? A: Yes, and his son"); Deposition of Johnny Ma, 78 (Feb. 12, 1998) ("Q: Do you know who runs his busi-

day decisions of the family's American operations and has been known to overrule her father. One business associate Glenville Stuart stated: "Jessica is like the big boss. She runs everything I'm sure."<sup>558</sup> According to Robert Prins, the president of Iowa Wesleyan College, Ms. Elnitiarta controls the family's "California West Coast responsibilities" and is involved in all of the family's business decisions.<sup>559</sup> Ms. Elnitiarta's control over the companies has apparently increased in recent years.<sup>560</sup>

Robert Prins also testified that on at least two occasions, he observed Ms. Elnitiarta overruling her father's decisions to provide financial assistance to the college.<sup>561</sup> Glenville Stuart similarly testified that Ms. Elnitiarta has "veto power" over her father's decisions.<sup>562</sup> In sum, based on the depositions conducted by this Committee, there appears to be no support for the majority's suggestion that Ms. Elnitiarta made political contributions at her father's directions.

#### E. EVALUATION OF CHAPTER V OF THE MAJORITY REPORT

Chapter V of the majority's report alleges that the Department of Justice and the Federal Election Commission failed to vigorously pursue campaign finance violations. The facts, however, show that the Department of Justice's Campaign Finance Task Force has actively investigated and prosecuted campaign finance violations. Similarly, given its limited resources, the FEC has also done its best to enforce federal election laws.

The Justice Department Task Force, organized in late 1996, is comprised of over 120 staff including over 20 attorneys and 45 FBI agents.<sup>563</sup> At the December 9, 1997, Committee meeting, Attorney General Reno described the Task Force's accomplishments to date: "More than 1 million pages of documents have been obtained, hundreds of interviews have been conducted, and agents have been dispatched across the country and around the world to track down leads."<sup>564</sup> As of October 1, 1998, the Task Force obtained six guilty pleas<sup>565</sup> and had indicted seven others in connection with its investigation.<sup>566</sup>

The FEC has had between 200 and 400 enforcement cases pending at any given time over the last five years. Its compliance budget from Congress, however, was only \$10.5 million for fiscal year 1998 and its enforcement staff was limited to 24 staff attorneys, 5 assistant general counsels, 12 paralegals, and 2 investigators.<sup>567</sup>

nesses here in the United States? A: Probably Jessica, his daughter."); Deposition of Haddi Kurniawan, 53 (Apr. 14, 1998) ("Q: Do you know who runs [Panda Industries]? A: Jessica"); Deposition of Robert Prins, 95-96 (Jan. 27, 1998).

<sup>558</sup> Deposition of Glenville Stuart, 114 (Feb. 18, 1998).

<sup>559</sup> Deposition of Robert Prins, 96 (Jan. 27, 1998).

<sup>560</sup> Deposition of Haddi Kurniawan, 93 (Apr. 14, 1998).

<sup>561</sup> Deposition of Robert Prins, 95-96 (Jan. 27, 1998).

<sup>562</sup> Deposition of Glenville Stuart, 115-16 (Feb. 18, 1998).

<sup>563</sup> Statistics provided by the Department of Justice Office of Legislative Affairs.

<sup>564</sup> House Committee on Government Reform and Oversight, Hearings on the Current Implementation of the Independent Counsel Act, 105th Cong., 1st Sess., v. 1 (Dec. 9, 10, 1997).

<sup>565</sup> Guilty pleas included: Nora and Gene Lum, Trisha Lum, Michael Brown, Johnny Chung, and Howard Glicker.

<sup>566</sup> Indictments included: Maria Hsia, Charlie Trie, Antonio Pan, Pauline Kanchanalak, Georgie Kronenberg, Mark Jimenez, and Yogesh Gandhi.

<sup>567</sup> House Committee on Government Reform and Oversight, Hearing on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess., 65, 66 (Mar. 31, 1998).



This has forced the FEC to dismiss or take no action on 77% of all the cases it received over the past three years.<sup>568</sup> The recent efforts of Congress to hamstring the FEC are discussed in more detail in Part V of this report.

The majority's allegations of malfeasance at the Department of Justice and the FEC do not concern the 1996 election campaign. Rather, they arise from activities in the 1994 and 1992 election campaigns. This retreat in time caused Rep. Waxman to observe, "it seemed to me, that what we were supposed to be investigating are abuses from the 1996 election. . . . At this rate, Mr. Chairman, it will probably be some time in June, I expect, that we'll be focusing on the 1960 election, and I suppose the topic will be whether President Kennedy stole that election."<sup>569</sup>

*1. Allegations Relating to Jorge Castro Barredo and Charles Intriago*

*Majority Allegation:* Jorge Castro made foreign conduit contributions to the DNC in the 1992 campaign.

*The Facts:* On April 30, 1998, the Committee held a hearing entitled, "Venezuelan Money and the Presidential Election." At the hearing, the Committee heard evidence that in 1992, two U.S. citizens acted as conduits for \$50,000 in campaign contributions from a Venezuelan company. The Committee's first witness, Jorge Castro, testified that he and his aunt, Maria Sire Castro, each contributed \$20,000 to the Democratic National Committee and \$5,000 to two separate state Democratic parties in 1992. Mr. Castro and Ms. Sire Castro are both U.S. citizens. Mr. Castro further testified that he and Ms. Sire Castro were reimbursed for the contributions by a Venezuelan company owned by Mr. Castro's grandfather, Orlando Castro Llanes.

The next witnesses, Assistant Manhattan District Attorneys Richard Preiss and Joseph Dawson, testified that, while investigating the Castro family for bank fraud, they uncovered bank records and canceled checks that showed that Mr. Castro and Ms. Sire Castro received wire transfers in amounts equal to the contributions from a Venezuelan company owned by Mr. Castro Llanes in the days following the contributions. Mr. Castro Llanes, through his attorney, disputes that he made conduit contributions.<sup>570</sup>

Although the evidence is not conclusive, it supports Mr. Preiss and Mr. Dawson's conclusion that Mr. Castro and Ms. Sire Castro were reimbursed for their contributions through Mr. Castro Llanes's Venezuelan company. Thus, it appears that conduit contributions were made during the 1992 Presidential campaign.

*Majority Allegation:* Charles Intriago, the attorney who solicited the contributions from Mr. Castro, knew that the contributors would be reimbursed from foreign funds.

*The Facts:* Charles Intriago, a Miami attorney, former congressional staffer, and assistant U.S. attorney, has acknowledged that he solicited the contributions from Mr. Castro, but maintains that he did not know that the contributions were going to be reimbursed

<sup>568</sup> Statistics provided by the Federal Election Commission.

<sup>569</sup> House Committee on Government Reform and Oversight, Hearing on Venezuelan Money and the Presidential Election, 105th Cong., 2d Sess., 8 (Apr. 30, 1998).

<sup>570</sup> Minority staff phone interview of Richard Sharpstein (Feb. 1998).

from foreign funds. According to his attorney, "Charles Intrigo . . . solicited contributions from a number of well-off American citizens with whom he was acquainted, and who he believed had the personal financial capability to make such contributions."<sup>571</sup>

There is evidence in the record that supports Mr. Intrigo's position. At the hearing, Mr. Castro acknowledged that the conduit scheme was designed to make the contributions appear legal. According to the hearing testimony:

Mr. WAXMAN. Well, it would appear to the Democratic party, to President Clinton, the Clinton-Gore campaign, or anybody who got your money that you are a U.S. citizen writing a check to the Democratic party.

Mr. CASTRO. That is correct.

Mr. WAXMAN. On the surface, to them, it would appear to be legal.

Mr. CASTRO. That is correct.<sup>572</sup>

Furthermore, by his own admission, Mr. Castro had the financial resources to make the contributions. In other words, no one would have any reason to suspect that the contributions came from a foreign source.<sup>573</sup>

The majority's "evidence" that Mr. Intrigo knew that the contributions were illegal was limited to the testimony of Mr. Castro and a fax from Mr. Intrigo found by Mr. Dawson in Mr. Castro's office "instructing Castro Barredo to make conduit contributions."<sup>574</sup> This characterization of the fax, however, is factually inaccurate. The fax only specified the names of campaign committees and amounts of money to be contributed to each; it did not refer in any way to Mr. Castro being reimbursed through his grandfather's company. In fact, Mr. Castro testified that he asked Mr. Intrigo to send the fax with the exact instructions on where Mr. Castro should direct his contributions.

The most persuasive evidence implicating Mr. Intrigo is Mr. Castro's testimony. Mr. Castro, however, is not necessarily a credible witness. In February 1997, Mr. Castro, his grandfather, and his uncle were convicted of bank fraud and larceny which cheated depositors out of approximately \$55 million. Mr. Castro had used the bank's assets to purchase sports cars, an airplane, a yacht, and other luxuries. At the trial, Assistant District Attorney Preiss described Mr. Castro as someone "who thought [he] could fool other people."<sup>575</sup> Moreover, Mr. Castro's motives could be suspect because he did not "volunteer" information about the conduit contributions until after his conviction. Mr. Castro brought up the contributions at a debriefing with prosecutors at which he attempted to show that he wanted to cooperate with prosecutors. In return, at his sentencing on December 15, 1997, Assistant District Attor-

<sup>571</sup> Statement of Robert Plotkin (counsel for Charles A. Intrigo) (Reprinted in Hearing on Venezuelan Money and the Presidential Election, 35-37).

<sup>572</sup> House Committee on Government Reform and Oversight Hearing on Venezuelan Money and the Presidential Election, 105th Cong. 2d Sess., 41, Apr. 30, 1998.

<sup>573</sup> Majority counsel Richard Bennett asked Mr. Castro: "In terms of your own personal financial situation in 1992, were you in a financial position to make contributions totaling \$25,000 in September 1992?" Mr. Castro replied, "I was." Id. at 12.

<sup>574</sup> Majority Report, Chapter V, Part A, Section III.

<sup>575</sup> Trial Transcript, *New York v. Jorge Barredo Castro*, Ind. #2459-96, 14 (NY Sup. CT. Nov. 21, 1996).

ney Dawson told that court that Mr. Castro had provided the prosecutors with useful information. This led the judge to give Mr. Castro a reduced sentence of only 3½ years in prison instead of the possible maximum sentence of 40 years. Mr. Castro also testified that he was appearing at the Committee's hearing because the majority promised to write a letter on Mr. Castro's behalf to the New York State Department of Correctional Services in an effort to get Mr. Castro into a work release program. Mr. Castro testified at the hearing as follows:

Mr. BARRETT. The reason you are here today is you want to get out of jail, isn't it?

Mr. CASTRO. The reason I'm here today is?

Mr. BARRETT. You want to get out of jail.

Mr. CASTRO. Correct.

Mr. BARRETT. There's really no other reason other than that.

Mr. CASTRO. Go down deep, that's the reason.<sup>576</sup>

*Majority Allegation:* The Castro family received "red carpet treatment" from the Clinton Administration.

*The Facts:* According to the majority report, Orlando Castro Llanes "received red carpet treatment from the Clinton Administration over the coming year," including attending President Clinton's inauguration in 1993, a White House reception for DNC donors, and a meeting with the State Department regarding Mr. Castro Llanes' business interests.<sup>577</sup>

The evidence, however, does not support the accusation that Mr. Castro Llanes received any special treatment from the Clinton administration as a result of his grandson's campaign contributions. In fact, Mr. Castro testified that the Castro family did not receive any special treatment at the inauguration. When asked by majority counsel if he and his family attended one of the inaugural balls, Mr. Castro replied, "Not the inaugural ball. It was the big—the small gathering in front of the Capitol Hill with about 3 million other people."<sup>578</sup>

Similarly, it appears that Mr. Castro Llanes's visit to the White House was limited to a large reception attended by hundreds of people.<sup>579</sup> The State Department meeting also appears to be nothing more than a courtesy meeting arranged through Mr. Intriago's connections.<sup>580</sup> There is no evidence that the meeting was related to the Castro contributions or that the State Department took any action in response to that meeting.

*Majority Allegation:* The Justice Department ignored the evidence of the illegal conduit contribution scheme involving Mr. Castro.

<sup>576</sup>House Committee on Government Reform and Oversight Hearing on Venezuelan Money and the Presidential Election, 105th Cong. 2d Sess., 52 (Apr. 30, 1998). See also Letter from Chairman Burton to Commissioner Glenn S. Goord (New York State Department of Correctional Services) (May 1, 1998).

<sup>577</sup>Majority Report, Ch. V, Part A, Section II (A). The report also alleges that Mr. Castro Llanes was "seeking to have Intriago appointed U.S. ambassador to Venezuela," Majority Report, Ch. V, Part A, Section I(A). There was no evidence presented to show that Mr. Intriago either sought, or was considered for, this position.

<sup>578</sup>House Committee on Government Reform and Oversight Hearing on Venezuelan Money and the Presidential Election, 105th Cong. 2d Sess., 29 (Apr. 30, 1998).

<sup>579</sup>Id.

<sup>580</sup>Id. at 31.

*The Facts:* The facts show that the Justice Department did investigate the evidence gathered by the Manhattan District Attorney and, at the time of the Committee hearing, the Justice Department's investigation had not been closed.

In May 1997, an assistant U.S. attorney and agents from the FBI and the IRS met with Mr. Preiss and Mr. Dawson from the Manhattan District Attorney's office in New York. That summer, the case was transferred to the Justice Department Task Force and assigned to another attorney, who also met with Mr. Preiss and Mr. Dawson about the case. More recently, the Justice Department sent FBI agents to interview Mr. Intriago and his former assistant, Wendy Brown, and interviewed members of the Castro family.<sup>581</sup>

The majority's allegations are based on a letter from the Justice Department to the Manhattan District Attorney which said that the Justice Department "had concluded that there is at this time no further role for [Mr. Castro] to play in matters under investigation by the Task Force."<sup>582</sup> The letter was a response to a call from Mr. Preiss to the Justice Department asking if the Justice Department wanted the Manhattan District Attorney to request the trial judge to delay Mr. Castro's sentencing and was not indicative of the Justice Department's interest in pursuing the case. In fact, according to the Justice Department, the case is still under investigation. It is not unusual for the Justice Department to take considerable time to build a strong case or to decide that the evidence against certain individuals is insufficient. For example, there was evidence that Charlie Trie had made illegal contributions during the 1996 campaign as early as October 1996, yet Mr. Trie was not indicted until January 28, 1998—15 months after the allegations surfaced.

Regrettably, Chairman Burton never gave the Justice Department an opportunity to respond to his accusations and clarify the record. When asked at the hearing why the Justice Department was not invited to testify, Chairman Burton assured the Committee that the Justice Department would be invited to a subsequent hearing.<sup>583</sup> The Justice Department, however, was never given an opportunity to respond to these accusations.

*Majority Allegation:* The contributions were made from "drug money" and Jorge Castro was in danger of physical harm for his testimony.

*The Facts:* Chairman Burton made additional unsubstantiated allegations the night before the April 30, 1998, hearing on CNN's Larry King Live. On that program, Chairman Burton stated, "Tomorrow we're going to have a hearing. We're bringing in a fellow who laundered \$50,000 from Venezuela. We think part of it might have been drug money. Mr. Morgenthau, the district attorney in New York—a Democrat—referred some of this information to us. We finally got this fellow in a safe prison so he wouldn't be stabbed or hurt when he testified."<sup>584</sup>

<sup>581</sup> Minority staff phone interview of Robert Plotkin (April 1998).

<sup>582</sup> Letter from Lee Radek (Justice Department public integrity section chief) to Robert Morgenthau (Manhattan district attorney) (Oct. 17, 1997).

<sup>583</sup> House Committee on Government Reform and Oversight Hearing on Venezuelan Money and the Presidential Election, 105th Cong. 2d Sess., 69 (Apr. 30, 1998).

<sup>584</sup> Chairman Burton, CNN's Larry King Live (Apr. 29, 1998).

These accusations were discredited at the hearing. When asked about the accusation that the contributions may have come from drug money, Mr. Preiss, the assistant Manhattan district attorney, testified that “there was nothing at all that was related to that.”<sup>585</sup> Similarly, Mr. Preiss testified that Mr. Castro never expressed any concerns about his safety other than general concerns about being a cooperating witness while in prison.<sup>586</sup> In fact, when Mr. Castro was asked if someone had attempted to stab him while in prison, he replied, “That’s incorrect.”<sup>587</sup>

## 2. Allegations Relating to Thomas Kramer and Howard Glicken

Howard Glicken is a Democratic fundraiser from Florida. Mr. Glicken was investigated by the FEC for his role in soliciting illegal foreign campaign contributions from German national Thomas Kramer. Ultimately, the FEC decided not to pursue any action against Mr. Glicken, primarily because of a lack of resources and the fact that the statute of limitations was about to expire on his violations. The Department of Justice campaign finance task force obtained a guilty plea from Mr. Glicken in July 1998.

*Majority Allegation:* The FEC decided not to proceed against Mr. Glicken because of his ties to the Vice President.

*The Facts:* The overwhelming weight of the evidence produced at a Committee hearing on March 31, 1998, indicated that the FEC’s decision not to proceed against Mr. Glicken was not the result of improper political influence.<sup>588</sup> In fact, FEC General Counsel Larry Noble testified that the decision not to proceed against Mr. Glicken was approved by a unanimous vote of the Commission’s Republican and Democratic commissioners.<sup>589</sup>

In this case, the FEC had already obtained major fines against the contributors (Mr. Kramer and his secretary, Terri Bradley), the only recipient of the illegal contributions that refused to return the improper funds (the Republican party of Florida), and the law firm that represented Mr. Kramer in immigration matters (Greenberg, Traurig, et al.). Mr. Noble testified that, faced with a large caseload and few resources to handle that caseload, he decided to recommend that the FEC not pursue *any* of the solicitors of Mr. Kramer’s contributions to *both* Democrats and Republicans:

If you look at the file on this case, we did not search out any of the other solicitors. There were a lot of contributions made here. We can assume that there were a lot of solicitors, both on the Democratic and the Republican side, who solicited contributions from Mr. Kramer. We don’t have the resources to go after every one of those. We had to make a decision early on in the case of what we were going to do, and you have to take it at the time of that case of what we were dealing with. In terms of just resources, we were averaging 319 cases in any given month

<sup>585</sup> House Committee on Government Reform and Oversight Hearing on Venezuelan Money and the Presidential Election, 105th Cong. 2d Sess., 93 (Apr. 30, 1998).

<sup>586</sup> *Id.*

<sup>587</sup> *Id.* at 74.

<sup>588</sup> House Committee on Government Reform and Oversight, Hearing on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and Other FECA Violations, 105th Cong., 2d Sess. (Mar. 31, 1998).

<sup>589</sup> *Id.* at 81.

from that year . . . of which we activated only about a third.<sup>590</sup>

According to Mr. Noble, part of the reason resources were not available to pursue Mr. Glicker was the Commission's determination to address allegations of wrongdoing in the 1996 election cycle:

When we discuss how to proceed on these cases, we're aware that we can only handle a very limited amount—a very limited number of investigations, and, frankly, at the time this came up last summer, we knew that we are already dealing with large cases coming in from the 1996 election. Remember, these contributions are from 1993, 1994. We are trying to get out of the 1993, 1994 cycle and we have to look at where the resources are going to go.<sup>591</sup>

Mr. Noble also explained why the Commission would be unable to complete its investigation into Mr. Glicker before the expiration of the statute of limitations:

If you look at the procedures in the statute that we have to follow, we have figured out that not counting any work the FEC does, we have to take approximately 120 to 130 days to get a case through. That's not counting any investigation, any writing of reports. We know, as a practical matter, based on our experience, that it would take us a long time to get that case [the Glicker case] through, unless it was going to settle early.<sup>592</sup>

Finally, Mr. Noble explained why reference had been made to Mr. Glicker's relationship with the Vice President:

Mr. WAXMAN. Your statement said that this man was, "a prominent Democratic fundraiser including his potential fundraising involvement in support of Vice President Gore's expected Presidential campaign, it is unclear that this individual would agree to settle this matter short of litigation." Now that's all one sentence, but do you think he's not going to settle the litigation because he's a friend of Gore's?

Mr. NOBLE. Our experience has been that the more prominent somebody is, the higher the profile that he is, that they are going to fight you more.<sup>593</sup>

No evidence was produced at the hearing calling into question Mr. Noble's assurances that no improper factors had been taken into account in the decision not to proceed against Mr. Glicker.

*Majority Allegation:* The FEC was negligent in failing to refer the Glicker matter to the Department of Justice.

*The Facts:* Federal law prohibits the FEC from referring any matter to the Department of Justice without first conducting its own investigation. 2 U.S.C. § 437g (a)(5)(c) prohibits a referral to the Justice Department absent a "finding of probable cause" by the Commission. A "finding of probable cause" by the Commission can

<sup>590</sup>Id. at 40.

<sup>591</sup>Id. at 63–64.

<sup>592</sup>Id. at 80.

<sup>593</sup>Id. at 101–102.

only occur after a lengthy administrative procedure, including an investigation, mandated by the FEC's authorizing statute.<sup>594</sup> As explained by the witnesses at the Committee's hearing into the matter, such an investigation could not have been completed before the statute of limitations had run.

During the Committee's hearing on March 31, 1998, Mr. Noble and Lois Lerner, associate general counsel at the FEC, testified as follows:

Mr. BURTON. If it's a criminal activity involving campaign contributions of this type, it should have been referred to the Justice Department for action, and you didn't do it.

Ms. LERNER. We can't do it under the statute. We can only do what the statute allows us to.

Mr. NOBLE. Mr. Chairman, we would've violated our law had we referred Mr. Glicker over without finding probable cause to believe.

Mr. BURTON. But the probable cause, you know——

Mr. NOBLE. It's a formal finding by the Commission. This is not just something we decide is probable cause. We have to put a case before the Commission and we have to put the evidence before the Commission and say there's probable cause. And they have to vote by four votes that there's probable cause.<sup>595</sup>

#### F. EVALUATION OF CHAPTER VI OF THE MAJORITY REPORT

The minority's discussion of the controversy surrounding the Department of Interior's denial of the Hudson casino application is discussed in Part II.C of the minority report.

#### IV. A REVIEW OF QUESTIONABLE REPUBLICAN CAMPAIGN FINANCE PRACTICES

The majority report describes in detail allegations relating to conduit contributions to the Democratic Party, foreign contributions to the Democratic Party, Democratic contribution-for-access incidents, and other purported Democratic campaign finance improprieties. There is no question that the major political parties have exploited a campaign finance system riddled with loopholes. And there is no question that Democrats have received illegal campaign contributions.

Unfortunately, the majority report addresses only one side of the story. It fails to discuss the many serious allegations of questionable campaign finance practices by Republicans. This section of the minority report discusses several examples of Republican abuses: conduit contributions; foreign contributions; enhanced access derived from contributions; policy benefits that may be a result of campaign contributions; and other questionable campaign practices.

<sup>594</sup> 2 U.S.C. § 437g.

<sup>595</sup> House Committee on Government Reform and Oversight Hearing on Federal Election Commission Enforcement Actions, 105th Cong., 2d Sess., 100 (Mar. 31, 1998).

## A. CONDUIT CONTRIBUTION SCHEMES AND REPUBLICAN CAMPAIGNS

Although the Committee's investigation focused on conduit contributions to Democratic candidates and campaigns, one of the most serious allegations involving illegal conduit contributions in the 1996 campaign actually involves Republicans. In the case of the conduit contribution schemes involving Charlie Trie and Johnny Chung, there is little evidence that the candidates and parties receiving the contributions were aware of the conduit scheme. There is, however, specific and credible evidence that a senior Republican member of Congress, Majority Whip Tom DeLay, and a Republican congressional candidate, Brian Babin, knowingly participated in a scheme to funnel illegal conduit contributions to Mr. Babin's campaign.

The allegations involving Mr. DeLay and Mr. Babin, as well as evidence of four other conduit contribution schemes involving Republicans, are discussed below.

*1. The Prohibition on Conduit Contributions*

The Federal Election Campaign Act (FECA) limits the amount that an individual can give to a candidate in any federal election to \$1,000.<sup>596</sup> To prohibit wealthy individuals from circumventing this limitation, FECA prohibits persons from contributing money through others:

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.<sup>597</sup>

FECA also states in pertinent part:

For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.<sup>598</sup>

Both Republicans and Democrats have violated the conduit contribution provisions of FECA. As Rep. Waxman noted, "Conduit payments are, of course, illegal; unfortunately, they've also become much too common."<sup>599</sup> In the fall of 1997, the Federal Election Commission was investigating 27 conduit payments involving 214 individuals. The FEC had also assessed fines in 21 other conduit contribution cases involving the 1992, 1994, and 1996 election cam-

<sup>596</sup> 2 U.S.C. § 441a.

<sup>597</sup> 2 U.S.C. § 441f.

<sup>598</sup> 2 U.S.C. § 441a (a)(8).

<sup>599</sup> House Committee on Government Reform and Oversight, Hearing on Conduit Payments to the Democratic National Committee, 105th Cong., 1st Sess., 12 (Oct. 9, 1997).



paings. The total fines assessed by the FEC against the 108 participants in the 21 completed cases was \$335,000.<sup>600</sup>

*2. Conduit Contribution Scheme Involving Majority Whip DeLay, Peter Cloeren, and Brian Babin*

In the typical conduit contribution scheme, the organizers of the scheme and the participants know that it is occurring, but the candidate may be unaware that the contributions the campaign is receiving may be illegal. The Committee learned of only one instance where there is specific and credible evidence that the candidate knew that he was receiving illegal conduit contributions. This episode concerns Brian Babin, the Republican congressional candidate in the Second District of Texas in 1996, and Peter Cloeren, the organizer of the scheme who acknowledged his responsibility and was fined \$200,000. Mr. Babin is also alleged to have enlisted Majority Whip Tom DeLay's help to facilitate Mr. Cloeren's illegal conduit scheme and to encourage the scheme's participants to continue to violate federal election laws.

The allegations concerning Rep. DeLay, Mr. Babin, and Mr. Cloeren were the focus of a front page story in the August 5, 1998, edition of *The Hill*.<sup>601</sup> Citing a complaint filed with the FEC, *The Hill* reported that Rep. DeLay and his staff had advised Mr. Cloeren on ways to funnel illegal campaign contributions to Mr. Babin's campaign through "additional vehicles."<sup>602</sup> These additional vehicles allegedly included Triad Management Services, Inc., an organization that has previously been accused of illegally earmarking contributions to Republican candidates.<sup>603</sup> According to *The Hill* article, Mr. Cloeren followed Rep. DeLay's advice and suggestions, and contributed monies to Triad, Triad-related entities, and other Republican candidates with the full knowledge that those entities would give the money Mr. Cloeren contributed to them to Mr. Babin's congressional campaign.<sup>604</sup>

On August 6, 1998, all the Democratic members of the Committee (with the exception of Rep. Jim Turner, who recused himself) wrote to Chairman Burton to request that Chairman Burton schedule hearings in September 1998 to investigate the allegations that Majority Whip DeLay, the third-ranking Republican in the House, may have advised Mr. Cloeren on how to funnel illegal conduit contributions to Mr. Babin's campaign and to investigate substantial evidence of improprieties relating to Triad.<sup>605</sup>

Chairman Burton did not schedule the hearing requested by the Democratic members. In fact, he did not even respond to the letter of August 6, 1998. As a result, the minority staff made its own attempt to investigate these serious allegations. According to press accounts, these allegations concerning Rep. DeLay are also currently the subject of an ongoing criminal investigation by the Department of Justice Campaign Finance Task Force.<sup>606</sup>

<sup>600</sup> *Id.*

<sup>601</sup> Texas Donor: GOP Evaded Law, *The Hill* (Aug. 5, 1998).

<sup>602</sup> *Id.*

<sup>603</sup> *Id.*

<sup>604</sup> *Id.*

<sup>605</sup> Letter from Reps. Waxman, Lantos, et al. to Chairman Burton (Aug. 6, 1998).

<sup>606</sup> Justice Department Probes DeLay, *The Hill* (Sept. 30, 1998).

As part of its investigative efforts, the minority staff obtained an affidavit from Mr. Cloeren that provides considerable additional detail about his dealings with Mr. Babin, Rep. DeLay, and others. In this sworn affidavit, Mr. Cloeren states that in late 1995, Mr. Babin asked him to raise \$50,000 to help finance Mr. Babin's primary campaign in Orange County, Texas—a rural area consisting primarily of Democratic voters and blue-collar workers.<sup>607</sup> Mr. Cloeren states that he told Mr. Babin that he could give Mr. Babin a corporate check.<sup>608</sup> According to Mr. Cloeren, Mr. Babin responded that he did not care where the money came from as long as the money came from individuals, and that Mr. Cloeren should “work with loyal employees” to contribute money to the Babin campaign.<sup>609</sup> Mr. Cloeren says that he agreed to do so and asked various employees and their families to contribute \$1,000 to Mr. Babin with the understanding that Mr. Cloeren would reimburse them.<sup>610</sup>

According to Mr. Cloeren's affidavit, Mr. Babin asked Mr. Cloeren to find additional donors to fund Mr. Babin's run-off and general election campaigns.<sup>611</sup> Mr. Cloeren says he discussed the legality of the corporate reimbursement scheme with Mr. Babin, and Mr. Babin told him that “everyone” raised campaign money this way and that neither Mr. Cloeren nor Mr. Babin “would get caught.”<sup>612</sup> Mr. Cloeren then raised \$58,000 for Mr. Babin's campaign through this conduit contribution scheme from his employees.<sup>613</sup>

Mr. Cloeren states that Majority Whip Tom DeLay came to campaign for Mr. Babin in August 1996, and personally urged Mr. Cloeren to raise more money for Mr. Babin's campaign.<sup>614</sup> According to Mr. Cloeren's affidavit, on August 29, 1996, following a Babin campaign event, Rep. DeLay sat next to Mr. Cloeren at a country club luncheon. Mr. Cloeren states that during the lunch, Rep. DeLay told Mr. Cloeren that Mr. Babin's campaign needed additional money because Mr. Babin's Democratic opponent (now Representative Jim Turner) was receiving money from “liberal interest groups” such as labor unions and trial lawyers.<sup>615</sup> Mr. Cloeren says that he replied that he could not raise more money

<sup>607</sup> Affidavit of Peter F. Cloeren, House Committee on Government Reform and Oversight (Aug. 6, 1998), para. 4–5 (hereafter “Cloeren Aff.”) (attached as Exhibit 6).

<sup>608</sup> *Id.* at para. 6.

<sup>609</sup> *Id.*

<sup>610</sup> *Id.* at para. 6–9.

<sup>611</sup> *Id.* at para. 8, 11, 13.

<sup>612</sup> *Id.* at para. 12.

<sup>613</sup> This amount was determined by examining the FEC's List of Receipts and Expenditures for the Babin campaign. As part of his cooperation with the government, the government agreed to hold Mr. Cloeren responsible for \$37,000 of the \$58,000. Press accounts uniformly attribute this lower total as the amount of the illegal conduit contributions Mr. Cloeren funneled to the Babin campaign. See, e.g., Questions for Tom DeLay, *The Hill* (Aug. 12, 1998); Dems Call for Probe of Charge that GOP Laundered Funds, *The Hill* (Aug. 12, 1998); Phone Tapes Implicate Candidate, *FEC Witness Says*, *Houston Chronicle*, A37 (Aug. 7, 1998); Texas Donor: GOP Evaded Law—House Leader Among Those Said to Have Advised Exceeding Limits, *The Hill* (Aug. 5, 1998).

<sup>614</sup> Cloeren Aff. at para. 17. At Mr. Babin's request, Mr. Cloeren paid the \$1,320 cost of Rep. DeLay's transportation to and from the August 29, 1996, Babin campaign event. Mr. Cloeren paid for the travel with corporate monies which constituted an in-kind contribution to Mr. Babin's campaign under Federal election law. Neither Mr. Babin nor Rep. DeLay reported this contribution on their respective FEC disclosure reports, which constitutes a separate violation of the campaign finance laws and regulations. Almost two years later, Mr. Babin wrote Mr. Cloeren to say that it “has come to [my campaign's] attention” that Mr. Cloeren has paid for the air charter for Rep. DeLay and reimbursed Mr. Cloeren for the cost of Rep. DeLay's travel. See *id.* at para. 14–15, and Exs. C, D.

<sup>615</sup> *Id.* at para. 17.

for Mr. Babin because he, Cloeren, had “run out of vehicles.”<sup>616</sup> According to Mr. Cloeren, Rep. DeLay responded specifically that “it would not be a problem” for Rep. DeLay “to find additional vehicles” for Mr. Cloeren since Rep. DeLay knew of some organizations and campaigns which could serve as these vehicles.<sup>617</sup>

Mr. Cloeren states in his affidavit that Rep. DeLay then turned to his campaign manager, Robert Mills, and stated that additional money could be funneled to Mr. Babin’s campaign through Triad and other congressional campaigns.<sup>618</sup> Mr. Cloeren states that Rep. DeLay told Mr. Cloeren that his aide, Mr. Mills, would follow-up with Mr. Cloeren on the details.

Mr. Cloeren states that others present at this lunch also heard Rep. DeLay discuss with Mr. Cloeren and Mr. Mills how Mr. Cloeren could use “additional vehicles” to funnel even more money to Mr. Babin’s campaign.<sup>619</sup> Minority staff investigators learned that two of Mr. Cloeren’s employees, Paul Peveto and Mike Lucia, were present at the lunch, and at least one of them told Mr. Cloeren that he heard the “vehicle” discussion between Rep. DeLay, Mr. Cloeren, and Mr. Mills.

Mr. Cloeren says that he received a call from Robert Mills the day after the August 1996 lunch to follow up on Rep. DeLay’s suggestions.<sup>620</sup> According to Mr. Cloeren, Mr. Mills gave Mr. Cloeren the names of two campaigns to which he could contribute.<sup>621</sup> Mr. Cloeren states that Mr. Mills told Mr. Cloeren that these campaigns, in turn, would make matching donations to Mr. Babin’s campaign.<sup>622</sup> Mr. Cloeren states that the two campaigns Mr. Mills identified for Mr. Cloeren were those of Senator Strom Thurmond and Stephen Gill, a candidate for Congress in Tennessee.<sup>623</sup>

FEC records substantiate Mr. Cloeren’s statements. They show that on September 30, 1996, Thurmond donor Gayle O. Averyt made a \$1,000 contribution to the Babin campaign, and during October 1996, several Gill campaign donors with close links to Triad contributed \$1,000 to the Babin campaign.<sup>624</sup> Then, on November 1, 1996, Mr. Cloeren contributed \$1,000 to the Gill campaign and on November 5, 1996, he contributed \$1,000 to the Thurmond campaign.<sup>625</sup>

According to Mr. Cloeren, Mr. Mills also told Mr. Cloeren in their telephone call following the August 1996 lunch meeting that an additional way Mr. Cloeren could get money to Mr. Babin’s campaign was to give money to certain groups who would then turn around

<sup>616</sup> Id.

<sup>617</sup> Id.

<sup>618</sup> Id.

<sup>619</sup> Id.

<sup>620</sup> Id. at para. 20.

<sup>621</sup> Id.

<sup>622</sup> Id. at para. 20–21.

<sup>623</sup> Id. at para. 20.

<sup>624</sup> On Oct. 23, 1996, Gill donors Floyd and Anne Coates made \$1,000 contributions to the Babin campaign and Gill donors Robert L. Cone and Dawn M. Cone each contributed \$500 to the Babin campaign. Each of these Gill donors is associated with Triad. Floyd and Anne Coates contributed \$15,000 to Triad-supported candidates in the final two weeks of the 1996 election, and Mr. Coates has admitted making PAC contributions at Triad’s suggestion. Minority Report of the Senate Committee on Governmental Affairs, Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, Rpt. 105–167, at 6293 (hereafter “Senate Minority Report.”) As discussed more fully in the Senate minority report, Robert Cone provided over \$1.5 million to Triad and its related entities. Id. at 6293–94.

<sup>625</sup> FEC Records.

and contribute matching donations to Mr. Babin's campaign. Mr. Cloeren says that Mr. Mills specifically told Mr. Cloeren that Mr. Mills knew of certain organizations which would agree to take any contribution Mr. Cloeren made and then earmark Mr. Cloeren's money for Mr. Babin's campaign.<sup>626</sup>

After his telephone conversation with Mr. Mills about how to give additional money to Mr. Babin's campaign without appearing to give money directly to Mr. Babin, Mr. Cloeren says that he received further telephone calls to pressure him to contribute money to groups that would agree to give Mr. Babin's campaign the identical amount that Mr. Cloeren donated to the groups. Mr. Cloeren states that he received these follow-up calls from Mr. Babin, Carolyn Malenick—who identified herself to Mr. Cloeren as the head of Triad Management Services, Inc.—and Walter Whetsell, a Babin campaign consultant.<sup>627</sup>

Mr. Cloeren recalls one phone call where Mr. Whetsell told him that a Triad affiliate, Citizens for Reform, had already made its "pre-arranged contributions" to Mr. Babin's campaign.<sup>628</sup> Based on this phone call, Mr. Cloeren says that he and his wife each donated \$10,000 to Citizens for Reform on November 1, 1996.<sup>629</sup> According to his affidavit, the only reason that Mr. Cloeren made these contributions was to benefit the Babin campaign. Mr. Cloeren states that Mr. Babin, Carolyn Malenick, and Mr. Whetsell each told Mr. Cloeren that the entire \$20,000 contribution Mr. Cloeren and his wife made to Citizens for Reform would go to help the Babin campaign.<sup>630</sup> Mr. Cloeren also states that Triad President Carolyn Malenick specifically told him that his contributions to Citizens for Reform would be used exclusively to produce campaign commercials to help Mr. Babin's campaign, and that Mr. Babin's campaign knew that the monies Mr. Cloeren donated to Citizens for Reform would be used for this purpose.<sup>631</sup>

In search of even more "vehicles" to funnel money to his campaign, Mr. Babin personally solicited Mr. Cloeren for a \$5,000 contribution to a PAC named Citizens United Political Victory Fund ("Citizens United"), according to Mr. Cloeren.<sup>632</sup> Mr. Cloeren says that Mr. Babin told Mr. Cloeren that Citizens United would send \$5,000 to Mr. Babin's campaign if Mr. Cloeren donated \$5,000 to Citizens United.<sup>633</sup> Mr. Cloeren says that he made a \$5,000 donation to Citizens United on October 14, 1996, with the intent of benefitting Mr. Babin's campaign for Congress.<sup>634</sup> FEC records show that Citizens United contributed \$5,000 to Mr. Babin's campaign on the same day that Mr. Cloeren says that he made his \$5,000 donation to Citizens United.<sup>635</sup>

According to Mr. Cloeren's affidavit, Mr. Babin, Ms. Malenick, and Mr. Whetsell all used the names Citizens for Reform, Citizens

<sup>626</sup> Cloeren Aff., para. 21.

<sup>627</sup> Id. at para. 22, 23, 25.

<sup>628</sup> Id. at para. 23.

<sup>629</sup> Id.

<sup>630</sup> Id.

<sup>631</sup> Id.

<sup>632</sup> Id. at para. 24.

<sup>633</sup> Id.

<sup>634</sup> Id.

<sup>635</sup> FEC Disclosure Reports of Brian Babin for Congress '96 and Citizens United Political Victory Fund.

United, and Triad interchangeably.<sup>636</sup> Mr. Cloeren says that Ms. Malenick, Mr. Babin, and others led Mr. Cloeren to believe that Triad was the umbrella name for all these different groups.<sup>637</sup> Mr. Cloeren states that Mr. Babin also told Mr. Cloeren that Triad and Citizens for Reform were the same entity, and that the various other non-campaign organizations which could send money to Mr. Babin that the two had discussed “all ran together.”<sup>638</sup>

Mr. Cloeren says that he had never before made a financial contribution to a Congressional campaign and had virtually no knowledge of the campaign finance laws before becoming involved in the Babin campaign.<sup>639</sup> Mr. Cloeren states in his affidavit:

I would not have participated in the conduit contributions scheme if Mr. Babin had not suggested it to me. I would not have given any of my money to the Triad entity Citizens for Reform, Citizens United, or to the campaigns of Senator Thurmond and Mr. Gill if I had not been told that these groups would effectively use every dollar I gave them for the Babin campaign.<sup>640</sup>

Rep. DeLay, Mr. Babin, and others implicated by Mr. Cloeren have specifically denied these allegations.<sup>641</sup> Because Chairman Burton has refused to investigate these issues, the members of the Committee are not in a position to evaluate all the facts. Nonetheless, it is clear that Mr. Cloeren’s allegations provide specific and credible evidence of wrongdoing by Rep. DeLay. A full and fair examination is needed to learn what Rep. DeLay and his staff knew about the role of Triad and other groups who violated federal election laws, and whether the Majority Whip and his staff counseled and facilitated others to evade the strictures of the election law.

### *3. Conduit Contribution Scheme Involving Thomas Stewart*

Thomas J. Stewart, the Chief Executive Officer of the multi-billion dollar Services Group of America company organized and participated in another conduit scheme that benefitted Republicans. This multi-year scheme funneled \$120,000 to ten Republican candidates between 1990 and 1996.<sup>642</sup> Similar to the other conduit contribution schemes discussed in this section, the Stewart/Services Group conduit contribution scheme involved illegally reimbursing employees and their spouses and family members for contributions they made to candidates and to political action committees. Unlike the alleged conduit contribution scheme involving Rep. DeLay, Mr. Cloeren, and Mr. Babin, however, there is no evidence that any of the candidates who received the illegal contributions knew that the monies they received were illegal conduit contributions.

<sup>636</sup> Cloeren Aff., para. 25.

<sup>637</sup> Id. at para. 25.

<sup>638</sup> Id. at para. 25.

<sup>639</sup> Id. at para. 1–2.

<sup>640</sup> Id. at para. 31.

<sup>641</sup> See, e.g., Texas Donor: GOP Evaded Law—House Leader Among Those Said to Have Advised Exceeding Limits, *The Hill* (Aug. 5, 1998); Phone Tapes Implicate Candidate, FEC Witness Says, *Houston Chronicle*, A37 (Aug. 7, 1998); Dems Call for Probe of Charge that GOP Laundered Funds, *The Hill* (Aug. 12, 1998); Questions for Mr. DeLay, *The Hill* (Aug. 12 1998); Justice Department Probes Delay, *The Hill* (Sept. 30, 1998).

<sup>642</sup> Tycoon Fined \$5 Million for Illegal GOP Gifts, *Portland Oregonian* (Mar. 18, 1998).

Mr. Stewart devised the illegal conduit contribution scheme with Dennis J. Specht, the Chief Financial Officer of Food Services of America (FSA). FSA is a subsidiary of the Services Group of America.<sup>643</sup> Press reports quote federal investigators as saying that Mr. Stewart and Mr. Specht arranged for FSA employees to receive bonuses with the understanding that this money would be contributed to specific candidates or to the company's own political action committee,<sup>644</sup> which would then itself direct the money to the candidates. Mr. Specht also served as treasurer of Service Group of America's PAC.<sup>645</sup> One FSA employee confirmed at a deposition that he had received a \$1,000 bonus in 1990, but had been required to send that \$1,000 to Service Group's PAC.<sup>646</sup>

Mr. Stewart, Mr. Specht, and FSA all pled guilty on March 18, 1998, to the criminal charges filed against them relating to this conduit contribution scheme. FSA pled guilty to 24 misdemeanor counts of federal election law violations, and was fined \$4.8 million for its participation in the conduit contribution scheme.<sup>647</sup> Mr. Stewart and Mr. Specht each pled guilty to one count of violating the federal election laws; each was fined \$100,000, ordered to serve a 60-day sentence of home confinement, ordered to perform 160 hours of community service at soup kitchens and homeless shelters, and placed on probation for one year.<sup>648</sup> Mr. Stewart also agreed to pay a fine to Washington State for his violation of state election laws.

Less than six months after Mr. Stewart pled guilty to his criminal violation of the federal election laws, Speaker Newt Gingrich and other politicians attended a GOP picnic at Mr. Stewart's home.<sup>649</sup> Speaker Gingrich refused to provide the press with his views about the propriety of holding a Republican fund raiser at Mr. Stewart's island home, and "walled himself off from reporters after arriving by private helicopter."<sup>650</sup>

#### 4. *Conduit Contribution Scheme Involving Simon Fireman and Aqua-Leisure Industries, Inc.*

In a conduit contribution scheme that began in 1991 and lasted into 1995, Republican activist Simon Fireman provided approximately \$94,000 in conduit contributions to Republicans. Mr. Fireman founded a company called Aqua-Leisure in 1970, and succeeded in turning it into one of the world's largest distributors of aquatic sports equipment.<sup>651</sup> Mr. Fireman became an active Republican during the Reagan administration, and was appointed to the Board of Directors of the Export-Import Bank both by Presidents Reagan and Bush.<sup>652</sup>

<sup>643</sup> Businessman Gets \$5 Million Fine for Fund-raising Fraud, *Baltimore Sun* (Mar. 19, 1998).

<sup>644</sup> *Id.*

<sup>645</sup> *Id.*

<sup>646</sup> *Id.*

<sup>647</sup> *Id.*

<sup>648</sup> Seattle Man Pleads Guilty to Illegal Donations He Reportedly Contributed to Republican Candidates, Causes through Employees, *Milwaukee Journal Sentinel* (Mar. 19, 1998).

<sup>649</sup> Gingrich Unruffled at GOP Fund-raiser: Democrats in Washington, State Fumed that the Host Once Violated Campaign Finance Laws, but Republicans Laughed Them Off as Hypocrites, *Atlanta Journal/Atlanta Constitution* (Aug. 23, 1998).

<sup>650</sup> *Id.*

<sup>651</sup> Senate Minority Report, 7375.

<sup>652</sup> *Id.* Mr. Fireman had originally been a Democrat and was appointed to several Presidential trade committees by President Carter and President Reagan.

Mr. Fireman first began funneling conduit contributions during the 1992 election cycle. During that election cycle, Mr. Fireman committed to raise money for the Bush-Quayle campaign. According to Carol A. Nichols, Mr. Fireman's executive assistant, when Mr. Fireman found it difficult to meet the fund raising amounts he had promised, he devised a scheme to solicit Aqua-Leisure employees and to reimburse them for the contributions they would make to the Bush-Quayle campaign.<sup>653</sup> Under this scheme, Mr. Fireman provided approximately \$21,000 to his employees at Aqua-Leisure Industries, Inc., so that the employees could contribute to the 1992 campaign of President Bush and Vice President Quayle.<sup>654</sup> Ms. Nichols stated that Mr. Fireman met with her to discuss which Aqua-Leisure employees could be solicited to make contributions.<sup>655</sup> Once an employee agreed to participate, Ms. Nichols collected a personal check from the individual and reimbursed them with cash from an account Mr. Fireman controlled.<sup>656</sup> Mr. Fireman also loaned money from Aqua-Leisure's corporate account to a non-employee who, in turn, gave that money to a separate set of contributors to make contributions to the Bush-Quayle campaign.<sup>657</sup> Mr. Fireman also funneled \$24,000 to the RNC in 1992 by giving Aqua-Leisure money to six individuals who used the money to make separate \$4,000 contributions to the RNC.<sup>658</sup>

Mr. Fireman continued to funnel conduit contributions to Republicans in the 1996 election cycle. In 1995, Mr. Fireman became a national vice chairman of Senator Bob Dole's presidential campaign finance committee. During the time he served as a Dole finance committee vice chair, Mr. Fireman was also orchestrating a scheme to funnel \$69,000 to the Dole campaign through conduit contributors. Mr. Fireman also loaned additional money to an unidentified individual, so that the individual could recruit additional persons to participate in the illegal conduit contribution scheme.<sup>659</sup> Mr. Fireman hoped that he would obtain a position in a Dole administration as a reward for his largesse. The criminal information to which Mr. Fireman pled guilty stated that "one goal and objective, among others, of Simon C. Fireman's secret scheme to funnel money to the Presidential campaign of Robert C. Dole was to obtain . . . a position with the United States government."<sup>660</sup>

Mr. Fireman entered a guilty plea to 11 counts of the criminal information, and he and his company agreed to pay a \$6 million fine. Aqua-Leisure Industries pled guilty to 70 counts concerning the scheme, and Carol Nichols pled guilty to one count of conspiracy relating to the scheme.<sup>661</sup>

<sup>653</sup> July 23, 1997 FBI Memorandum of Interview with Carol A. Nichols, printed in Senate Minority Report, 7397-99.

<sup>654</sup> Senate Committee on Governmental Affairs, Hearings on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns 105th Cong., 1st Sess., (1997). See also Criminal Information, *United States v. Simon Fireman, Carol Nichols, and Aqua-Leisure Industries, Inc.* (D. Mass. 1996), reprinted in Senate Minority Report, 7401-23.

<sup>655</sup> Id.

<sup>656</sup> Id.

<sup>657</sup> Id.

<sup>658</sup> Id.

<sup>659</sup> Id. The information identified the outside individual as "an individual known to the United States Attorney."

<sup>660</sup> Id.

<sup>661</sup> Id. at 7375.

The Senate minority report noted that the criminal investigation of Mr. Fireman revealed that Mr. Fireman may have funneled some foreign money to the Dole campaign through his conduit contribution scheme. Mr. Fireman formed a trust in Hong Kong, known as Rickwood Ltd. in 1985. Mr. Fireman acknowledged in his guilty plea that he used the trust to conceal certain expenditures that he wished to make.<sup>662</sup> The criminal information recited that the Rickwood trust maintained a U.S. bank account, but received wire transfers from Hong Kong.<sup>663</sup> The Hong Kong funds originated from Greyland Trading Company, a Hong Kong-based company which Mr. Fireman had acquired in 1988.<sup>664</sup> All of the money used to reimburse the Aqua-Leisure conduit contributors came from the Rickwood trust bank account,<sup>665</sup> and was withdrawn in a way to avoid detection and reporting by the bank where the account was maintained.<sup>666</sup>

The criminal investigation of Mr. Fireman's conduit contributions to the Dole campaign produced no evidence that anyone at the Dole campaign knew that Mr. Fireman may have been contributing foreign money to the campaign and no evidence that the Dole campaign knew that the contributions from the Aqua-Leisure Industries employees were illegal conduit contributions.<sup>667</sup> Indeed, Senator Dole disclaimed any knowledge that the contributions had been illegal and stated, "[i]n this business, you don't know who's giving you money. . . . We turned it over to the FEC."<sup>668</sup>

##### 5. Conduit Contribution Scheme Involving Empire Sanitary Landfill

The Dole campaign and other 1996 and 1994 Republican campaigns—including the campaigns of Representatives Bill Paxon and Jon Fox—received illegal conduit contributions from Empire Sanitary Landfill, Inc., in Scranton, Pennsylvania.<sup>669</sup> The upper management of the company solicited campaign contributions from Empire Sanitary's employees, family members, and business associates in addition to contributing monies themselves.<sup>670</sup> Management reimbursed themselves and the donors they had solicited with cor-

<sup>662</sup> Criminal Information, *United States v. Simon Fireman, Carol Nichols, and Aqua-Leisure Industries, Inc.* (D. Mass. 1996), reprinted in Senate Minority Report, 7401–23.

<sup>663</sup> Id.

<sup>664</sup> July 23, 1997, FBI Memorandum of Interview with Carol A. Nichols, reprinted in Senate Minority Report, 7397–99.

<sup>665</sup> Id.; Criminal Information, *United States v. Simon Fireman, Carol Nichols, and Aqua-Leisure Industries, Inc.* (D. Mass. 1996) reprinted in Senate Minority Report, 7401–23.

<sup>666</sup> Id.

<sup>667</sup> Senate Minority Report, 7376. The Dole campaign placed all the donations involving Fireman into an escrow account pending the outcome of the criminal investigation, and turned the contributions over to the U.S. Treasury following Fireman's guilty plea.

<sup>668</sup> Common Cause Joins Dole's Call for Inquiry Senator's Campaign Has Requested the FEC Check into Donations, *Kansas City Star* (Apr. 24, 1996).

<sup>669</sup> Empire Sanitary Landfill made illegal conduit contributions to the following campaigns: the 1996 Dole campaign (\$80,000), Senator Arlen Specter's 1996 campaign (\$10,000), Senator Rick Santorum's 1994 campaign (\$6,000), then National Republican Congressional Committee Chairman Representative Bill Paxon's 1996 campaign (\$1,000), Representative Jon Fox's 1994 campaign (\$3,000), Representative Frank Pallone's 1994 campaign (\$3,000), 1994 New Jersey Republican Senate candidate Chuck Haytaian's campaign (\$10,000), 1996 New Jersey Republican Senate candidate Richard Duhaime's campaign (\$5,000), the Clinton/Gore '96 Primary Committee (\$10,000), and Senator Max Baucus's 1996 campaign (\$1,000). Indictment, *United States v. Renato P. Mariani, Michael L. Serafini, Leo R. Del Serra, Alan W. Stephens, Robert Giglio, and Frank Serafini*, U.S. District Court for the Middle District of Pennsylvania, reprinted in Senate Minority Report 7439–7498.

<sup>670</sup> Senate Minority Report, 7377.



porate funds, thereby disguising from the various campaigns that Empire Sanitary was the true source of the donated monies.<sup>671</sup> These actions violated the federal law that bars corporations from donating money to a political campaign,<sup>672</sup> as well as the law that bars individuals from contributing to a campaign in the name of another person. Empire Sanitary pled guilty to a 40-count criminal information relating to the illegal conduit contribution schemes on October 7, 1997.<sup>673</sup> As part of its plea agreement, Empire Sanitary agreed to pay an \$8 million fine.<sup>674</sup>

The alleged principals of the Empire Sanitary conduit contribution scheme were named in a 140-count indictment relating to the contribution scheme, and are still awaiting trial.<sup>675</sup>

6. *Conduit Contribution Scheme Involving DeLuca Liquor & Wine Ltd.*

Ray Norvell, the vice president in charge of Nevada operations for DeLuca Liquor & Wine, Ltd., orchestrated another scheme to funnel illegal conduit contributions to the Dole campaign.<sup>676</sup> DeLuca Liquor & Wine, Ltd., is a Las Vegas company which is one of Nevada's largest distributors of liquor, wine, and beer.<sup>677</sup> Five DeLuca employees and their spouses contributed a total of \$10,000 to the Dole campaign during a three-day period in May 1995. According to press accounts, at least two of the contributors admitted that DeLuca had given them the money to make the contributions.<sup>678</sup>

Mr. Norvell pled guilty in June 1998 to two misdemeanor counts of violating the federal election laws: one count for making an illegal campaign contribution and one for causing the name of another person to be used in connection with a campaign contribution.<sup>679</sup> Mr. Norvell was fined \$100,000, and his plea agreement provided that DeLuca would not be prosecuted for reimbursing Mr. Norvell and the other DeLuca employees for their illegal conduit contributions to the Dole campaign.<sup>680</sup> At the time he devised the criminal conduit contribution scheme, Mr. Norvell thought that he had merely been clever. Mr. Norvell told a newspaper reporter that he knew federal election law prohibited corporate contributions, so he devised a scheme that he believed circumvented the law. "I gave them \$5,000 extra salary to give to political campaigns and also charities. . . . It's not illegal, I hope. . . . I know you can't give company checks."<sup>681</sup>

<sup>671</sup> Id. Just as with the Fireman/Aqua-Leisure Industries illegal conduit contributions discussed in this section, there is no evidence that any of the campaigns receiving illegal contributions from Empire Sanitary knew that the contributions were problematic. Id., 7377.

<sup>672</sup> 2 U.S.C. § 441b(a).

<sup>673</sup> Plea Agreement, *United States v. Empire Sanitary Landfill, Inc.*, U.S. District Court for the Middle District of Pennsylvania, reprinted in Senate Minority Report, 7425-7431.

<sup>674</sup> Id.

<sup>675</sup> Also named in the indictment were business associates of Empire Sanitary and a Pennsylvania state representative in whose district Empire Sanitary did business. See, Indictment, *United States v. Renato P. Mariani, Michael L. Serafini, Leo R. Del Serra, Alan W. Stephens, Robert Giglio, and Frank Serafini*, U.S. District Court for the Middle District of Pennsylvania, reprinted in Senate Minority Report, 7439-7498.

<sup>676</sup> Exec Pays \$100,000 Fine in Dole Contribution, Las Vegas Review-Journal (Sept. 22, 1998).

<sup>677</sup> Senate Minority Report, 7378-79.

<sup>678</sup> More Donations to Dole Campaign Possibly Illegal: Candidate Was Not Aware of Company's Actions, Aide Says, Kansas City Star (Sept. 29, 1996).

<sup>679</sup> Exec Pays \$100,000 Fine in Dole Contribution, Las Vegas Review-Journal (Sept. 22, 1998).

<sup>680</sup> Id.

<sup>681</sup> More Donations to Dole Campaign Possibly Illegal, Kansas City Star (Sept. 29, 1996).

The Senate minority report analyzed documents subpoenaed by the Senate Governmental Affairs Committee which showed that DeLuca had issued checks for \$2,000 each to five of its employees on May 18, 1995. The corporate payment stub for one of the checks contained the notation "Campaign-Dole."<sup>682</sup> Between May 19 and May 22, 1995, each of the five employees<sup>683</sup> who had received the checks, and their spouses, contributed \$1,000 to the Dole campaign.<sup>684</sup> Thus, within four days, the \$10,000 that DeLuca had issued to its employees had made its way to the Dole campaign.

Michelle McIntire, the spouse of a DeLuca employee who contributed to the Dole campaign, told reporters that she would not have given money to the Dole campaign if DeLuca had not paid for the donation.<sup>685</sup> Ms. McIntire stated, "[DeLuca] gave us the money. That was something the company wanted [my husband] to do, and so that's what we did. It's not anything that is uncommon."<sup>686</sup>

The Senate minority report did not uncover any evidence that anyone from the Dole campaign knew that DeLuca had illegally reimbursed its employees for the political contributions they made to the Dole campaign.<sup>687</sup>

#### B. REPUBLICANS HAVE RECEIVED FOREIGN CAMPAIGN CONTRIBUTIONS

The majority report extensively discusses various allegations of foreign contributions to Democratic campaign committees. There is, however, extensive evidence that Republicans have also received foreign campaign contributions. Indeed, to the extent that it is illegal to receive foreign campaign contributions, the evidence of Republican wrongdoing is in important respects more serious than the evidence of Democratic wrongdoing.<sup>688</sup> Republican Congressman Jay Kim is the only elected official to be convicted of knowingly soliciting illegal foreign campaign contributions. Additionally, the only specific and credible evidence implicating the head of a political party in a scheme to solicit contributions from foreign sources involves Haley Barbour, the former Chairman of the Republican National Committee (RNC). This evidence suggests that Chairman Barbour personally solicited a \$2.1 million loan guarantee from billionaire Hong Kong industrialist Ambrous Tung Young for the benefit of the RNC.

There is also substantial evidence that of the \$2.8 million in foreign contributions accepted by Republicans, approximately \$1.1 million has not been returned. Foreign funds that appear to remain in Republican coffers include:

<sup>682</sup> Senate Minority Report, 7379. Four of the checks—including the check with the "Campaign-Dole" notation—were consecutively numbered. *Id.*, 7499–7502.

<sup>683</sup> The five DeLuca employees were: Ray E. Norvell, Dale McIntire, Kenneth W. Leslie, Bruce Kobrin, and James P. O'Connor. *Id.*, 7379.

<sup>684</sup> *Id.*

<sup>685</sup> More Donations to Dole Campaign Possibly Illegal: Candidate Was Not Aware of Company's Actions, *Aide Says*, *Kansas City Star* (Sept. 29, 1996).

<sup>686</sup> *Id.*

<sup>687</sup> Senate Minority Report, 7379. When it learned that the DeLuca campaign contributions might be illegal conduit contributions, a spokesperson for the Dole campaign commented, "the campaign has been most vigilant in our fund-raising efforts and we're completely unaware of DeLuca's procedures and actions." *Some Las Vegas Contributions to Dole Campaign May Be Illegal*, *Fort Worth Star-Telegram* (Oct. 2, 1996).

<sup>688</sup> A recent federal court decision has held that it is not illegal to accept soft-money contributions from foreign sources. See *United States v. Trie*, Crim. No. 98–0029, Slip. Op. (D.D.C. Oct. 9, 1998). The implications of this decision are discussed in Part III and V of this report.

- \$782,460 of a \$2.1 million contribution from Hong Kong businessman Ambrous Young to the National Policy Forum (NPF), a subsidiary of the RNC;<sup>689</sup>
- a \$25,000 contribution from the Pacific Cultural Foundation, a group affiliated with the Taiwanese government, to the NPF;<sup>690</sup>
- \$95,000 of \$205,000 in contributions from German citizen Thomas Kramer to the Florida Republican Party;<sup>691</sup>
- \$215,000 of \$500,000 in apparently foreign contributions funneled to the RNC through Michael Kojima.<sup>692</sup>

The RNC has also not returned a \$50,000 contribution from Panda Industries, Inc., a company associated with Ted Sioeng, to the NPF. The majority report asserts that the DNC must return all Sioeng-related contributions.<sup>693</sup> Under the standard applied by the majority report, this \$50,000 contribution to the NPF should be returned as well.

The evidence implicating Rep. Kim, Chairman Barbour, and other Republican leaders in foreign contribution schemes is discussed below.

#### *1. Foreign Contributions Solicited by Rep. Jay Kim*

On August 11, 1997, Rep. Jay Kim (R-CA) and his wife pled guilty to knowingly accepting more than \$230,000 in illegal contributions from corporations and foreign donors. Those guilty pleas marked the conclusion of an extensive investigation into the financing of Rep. Kim's campaigns. This investigation also obtained guilty pleas against five South Korean conglomerates for funneling foreign contributions to the Kim campaign.

A detailed discussion of the convictions obtained against Rep. Kim, his wife, and the South Korean companies can be found in the minority report of the Senate Governmental Affairs Committee.<sup>694</sup> As part of the plea agreement, Rep. Kim admitted to knowingly violating several campaign finance laws, including the ban on foreign contributions.<sup>695</sup> In addition, there was substantial evidence that Rep. Kim attempted to obstruct the FBI's investigation into his campaign.<sup>696</sup> Furthermore, the evidence showed that he knowingly violated campaign laws even after he knew that he was under investigation.<sup>697</sup>

Despite the substantial evidence of serious wrongdoing, Rep. Kim received little criticism and no punishment from Republicans. In 1996, he played a substantial role in the Dole/Kemp presidential

<sup>689</sup> The NPF defaulted on approximately \$1.6 million of the \$2.1 million loan guaranteed by Mr. Young. Later, the RNC returned approximately \$700,000 to Mr. Young, but kept the remainder. The money to pay Mr. Young was wired directly from RNC accounts to Hong Kong. Senate Minority Report, 4670-4671.

<sup>690</sup> Letter from John R. Bolton to Michael Hsu (Aug. 7, 1996) (NPF 003200, 003204) (attached as Exhibit 12).

<sup>691</sup> \$323,000 Fine Levied for Foreign Contributions, Washington Post (July 19, 1997).

<sup>692</sup> Senate Minority Report, 5414.

<sup>693</sup> Majority Report, Chapter III: The Democrats' Failure to Return Illegal Campaign Contributions.

<sup>694</sup> Id. at 5683.

<sup>695</sup> *United States v. Jay Kim, et al.*, Plea Agreement (July 31, 1997).

<sup>696</sup> The Senate minority report notes that Rep. Kim contacted a potential witness against him and encouraged him to describe an illegal contribution as a "personal loan." Senate Minority Report, 5685.

<sup>697</sup> Id. at 5686 (describing how Rep. Kim's campaign continued to accept illegal corporate contributions in October of 1996).

campaign.<sup>698</sup> Even after his conviction, however, the House Ethics Committee has not taken any disciplinary action against him, and he has been permitted to retain his chairmanship of a House subcommittee.<sup>699</sup> Republican silence and inaction regarding Rep. Kim's crimes provides a sharp contrast to the vocal criticism and vigorous investigation that has been directed at Democrats.

## 2. *Foreign Contributions Solicited by Haley Barbour*

The Senate Governmental Affairs Committee uncovered substantial evidence suggesting that RNC Chairman Haley Barbour developed and implemented a plan to funnel foreign contributions to the RNC through the National Policy Forum, a subsidiary of the RNC. As stated in the minority report of the Committee:

Starting in 1993, Haley Barbour . . . carried out a scheme to collect foreign money by channeling the funds through the National Policy Forum. . . . The RNC did this by arranging for a foreign businessman to put up collateral for a bank loan to the NPF. Shortly after the NPF received the loan, it transferred more than \$2 million to the RNC which, in turn, channeled the money into the 1994 congressional races around the country.<sup>700</sup>

While Mr. Barbour denies any wrongdoing in connection with the NPF, the Senate minority report sets forth considerable evidence showing Mr. Barbour's heavy personal involvement in the planning and execution of the funneling scheme. Specifically, the Senate minority report notes that:

(1) Mr. Barbour was heavily involved in the formation of the NPF, and subsequently established himself as chairman of the NPF while simultaneously serving as Chairman of the RNC.<sup>701</sup>

(2) Mr. Barbour pushed the idea of soliciting foreign contributions for the NPF over the objections of the NPF's president, Michael Baroody, who later resigned.<sup>702</sup> In a confidential memo explaining his resignation, Mr. Baroody criticized Mr. Barbour's "fascination" with foreign money and called the ostensible legal separation between the NPF and the RNC a "fiction."<sup>703</sup>

(3) Mr. Barbour personally solicited Hong Kong businessman Ambrous Young to provide collateral for the NPF's loan.<sup>704</sup>

(4) Mr. Barbour personally raised with Mr. Young the possibility of having the NPF default on the loan so that Mr. Young's collateral could be used to pay the RNC.<sup>705</sup>

<sup>698</sup> Shop Talk, Roll Call (Oct. 17, 1996) ("Sophomore Rep. Jay Kim has found his place in Bob Dole's campaign. The Congressman appeared . . . in Chicago . . . to announce those who have been named 'Asian-Americans for Bob Dole Ethnic Coalition Co-chairs.' . . . A press release issued by the Dole campaign described Kim's 'stunning historic victory' [and] cast [Kim] as the 'role model' for American immigrants").

<sup>699</sup> On Oct. 9, 1998, the House Committee on Standards of Official Conduct released a final report on its investigation into Rep. Kim. That report found that in addition to violating House rules in accepting illegal campaign contributions, Rep. Kim has also violated House gift rules. The Committee, however, decided to take no further action against Rep. Kim because he lost his election and will leave Congress in 1999. Ethics Panel Ends Rep. Kim Case, Despite New \$63,640 Gift Charges, Roll Call (Oct. 13, 1998).

<sup>700</sup> Senate Minority Report, 4657.

<sup>701</sup> Id. at 4660.

<sup>702</sup> Id. at 4661.

<sup>703</sup> Id. at 4662-4663.

<sup>704</sup> Id. at 4665-4666.

<sup>705</sup> Id. at 4669.

The Senate minority report also finds that Mr. Barbour's testimony denying any wrongdoing "is riddled with inconsistencies and contradicted by virtually every other witness with knowledge of the loan transaction."<sup>706</sup> Specifically, the report notes that Mr. Barbour's claim that he was ignorant of the foreign source of the funds is contradicted by several witnesses, including several high-profile Republicans.<sup>707</sup>

There is compelling evidence that Mr. Barbour and his associates intended that the RNC would use the foreign money contributed to the NPF in the 1994 mid-term elections. The RNC's chief political strategist, Donald Fierce, told Fred Volcansek, the NPF fundraiser who solicited the contribution from Mr. Young, that the RNC would use the monies in the fall elections.<sup>708</sup> Mr. Volcansek repeated this information to the U.S. representatives of Mr. Young and directly to Mr. Young himself. According to Mr. Volcansek, he told Mr. Young that "his guarantee would allow for the loan to be made and that then the National Policy Forum would be allowed to be in a position to repay the RNC and the RNC would be able to use that money in the '94 election cycle."<sup>709</sup>

Mr. Barbour and the NPF maintain that the NPF is legally permitted to accept foreign contributions because it is independent of the RNC. Their position, however, is contradicted by the overwhelming weight of the evidence. In February 1997, the Internal Revenue Service denied the NPF's tax-exempt organization application because the NPF was a "partisan" organization "designed to promote the Republican Party and politicians affiliated with the Republican Party."<sup>710</sup> In addition, the bank utilized by the NPF noted that the NPF was "an off-shoot of the Republican National Committee";<sup>711</sup> Republican fundraisers and donors viewed the NPF and RNC interchangeably;<sup>712</sup> and there were significant irregular-

<sup>706</sup> Id. at 4673.

<sup>707</sup> Id. at 4673. Mr. Barbour's associate Fred Volcansek testified at his Senate deposition that he personally informed Mr. Barbour that the true source of the loan guaranty money was a Hong Kong company before the loan guaranty transaction was finalized:

Q: Prior to October 13, 1994, did you make Haley Barbour aware that Mr. Young would be transferring monies from Hong Kong that would be used to support the collateral used in the loan guarantee made to the National Policy Forum?

A: Yes, I did. . . .

Q: Do you recall the context in which you made Mr. Barbour aware of that?

A: I believe that it was in a meeting with Mr. [Donald] Fierce and Mr. Barbour and Mr. [Dan] Denning discussing this issue.

Q: Do you recall where that meeting took place?

A: At the Republican National Committee headquarters.

Senate Deposition of Fred Volcansek, 108-09 (July 21, 1997). Hereafter, citations to Senate depositions refer to depositions conducted by the Senate Governmental Affairs Committee.

<sup>708</sup> Id. Mr. Volcansek testified that Mr. Fierce told him that "they [the RNC] were going to use the money in the '94 election process in which there were numerous races that they thought they had an opportunity for and they needed the money back from the NPF that had been lent to the NPF." Id.

<sup>709</sup> Id.

<sup>710</sup> Letter from Edward R. Karcher, Internal Revenue Service, to the National Policy Forum (Feb. 21, 1997) (reprinted in Senate Minority Report, 4707-19).

<sup>711</sup> Deposition of Steven S. Walker, Jr., House Committee on Government Reform and Oversight, Ex. 26 (July 1, 1998). All references to depositions, unless otherwise noted, will be to depositions conducted by the House Committee on Government Reform and Oversight. The bank noted that the NPF and RNC shared top-level management and recommended that the loan guaranty transaction be approved, in part, "because of the close relationship between the [NPF] and the Republican National Committee." Id.

<sup>712</sup> Id. at Ex. 24 (letters from Philip T. Cavannaugh to Haley Barbour) (attached as Exhibit 13); Ex. 23 (1996 Memorandum from Kevin Kellum (Team 100) to Haley Barbour) (reprinted in Senate Minority Report, 4700). As late as 1996, Republican donors and fundraisers treated contributions to the NPF as tantamount to contributions to the Republican Party. Kevin Kellum, one of the heads of the RNC's Team 100 fundraising program, sent Mr. Barbour a memorandum

ities in the RNC's financial dealings with the NPF.<sup>713</sup> The NPF's "independence" was thus, at best, a dubious legal fiction.

Press accounts indicate that Mr. Barbour is currently under investigation by the Department of Justice for possible perjury before the Senate.<sup>714</sup> Those same accounts also indicate that the Department is investigating the underlying funneling scheme developed by Mr. Barbour.<sup>715</sup>

### *3. Additional Foreign Contributions Solicited by the NPF*

The minority has received evidence that the NPF solicited additional contributions that it knew—or had strong reason to believe—were from a foreign source. This evidence shows that in August 1996, the NPF received a \$25,000 contribution from the Pacific Cultural Foundation (PCF), a group affiliated with the Taiwanese government.<sup>716</sup>

The PCF contribution is significant because it is the only example of a foreign government contributing to an American political party. Indeed, documents produced to this Committee indicate that

in late February 1996 about how best to apportion among various Republican groups—including the NPF—a \$1 million donation from Nevada casino operator Stephen Wynn. Mr. Kellum's memo proposed three possible ways to divide the \$1 million to various Republican entities. Two of the options included having Mr. Wynn contribute at least \$250,000 to the NPF. The memo noted that there would be "less reported" by the RNC to the FEC if Mr. Wynn donated money to the NPF rather than more directly to the RNC. It thus appears that senior Republican fund raisers believed that a donation to the NPF was equivalent to making a donation to the RNC.

RNC donors also appear to have been told by high-ranking RNC officials that a contribution to the NPF would benefit the RNC. The vice president of federal relations for the Chevron Oil Company seems to have heard this point directly from Mr. Barbour. The Chevron executive wrote Mr. Barbour in May 1996 as follows: "I certainly appreciated the opportunity to visit with you recently and discuss Chevron's contributions to the Republicans Party and related organizations. Pursuant to that discussion, I have enclosed checks [of] \$25,000 for the National Policy Forum and \$15,000 for the remainder of the funds for the RNC that we agreed to." Deposition of Steven S. Walker, Jr., 146–48 and Ex. 24 (July 1, 1998). The Chevron letter to Barbour closed with the Chevron executive thanking Mr. Barbour for "your willingness to recognize the totality of our efforts on behalf of the Party." *Id.*

<sup>713</sup>The RNC and the NPF did not maintain an arms-length financial relationship, but instead behaved like a single entity. Unexplained commercial irregularities surround the RNC's initial funding of the NPF in May 1993, and the NPF never followed ordinary commercial practices when it borrowed approximately \$2.5 million from the RNC over a 15-month period.

For example, the NPF and RNC signed and executed documents both on May 1, 1993, and May 11, 1993, to reflect the initial \$100,000 loan from the RNC to the NPF. Each document appears to reflect that it is the original loan agreement, and there is no indication that the May 11, 1993, documents supersede the May 1 documents. Even though it is a highly unusual commercial practice to have signed documents from different dates reflect the exact same transaction, no NPF witness could explain why the RNC and the NPF executed both documents just 10 days apart. Deposition of Steven S. Walker, Jr., 89–102 and Exs. 15–16 (July 1, 1998). See also Senate Deposition of Kenneth J. Hill, 68, 77–83 (July 11, 1997). It also appears that the NPF violated the conditions of the initial \$100,000 loan agreement whether the documents were signed on May 1 or May 11, 1993. The RNC–NPF loan documents required the NPF to provide the RNC with copies of the NPF's certificate of incorporation, articles of incorporation, bylaws, and a resolution of the NPF's board of directors authorizing the NPF to enter into the loan agreement *before* the RNC signed and executed the loan agreement. Since the NPF was not incorporated until May 24, 1993, the NPF failed to comply with the terms of the loan agreement. Again, NPF witnesses were unable to offer any explanation for why the NPF received \$100,000 from the RNC in apparent violation of the terms of the loan agreement and prior to the legal existence of the NPF. Deposition of Steven S. Walker, Jr., 91, 98–100 and Exs. 15–16 (July 1, 1998); Senate Deposition of Kenneth J. Hill, 68–70 (July 11, 1997). Mr. Hill testified that he had "absolutely no idea" how the NPF could have provided documents to the RNC before the NPF came into existence.

Additionally, the NPF made no written requests for any of the \$2.5 million in loans from the RNC, did not provide the RNC with any written explanation for how the NPF would use the money, and did not explain to the RNC how the NPF would repay the loan amounts. Deposition of Steven S. Walker, Jr., 100–101, 110 (July 1, 1998). The lack of such basic formalities strongly suggests that the loan transactions between the RNC and the NPF were not commercial arms-length transactions.

<sup>714</sup>Ex-RNC Chairman Denounces News Leaks, Washington Post (Feb. 28, 1998).

<sup>715</sup>*Id.*

<sup>716</sup>Ex. 12, Letter from John R. Bolton to Michael Hsu (Aug. 7, 1996) (NPF 003200, 003204).

NPF officials understood the contribution to be from the Taiwanese government. For example, NPF President John Bolton acknowledged receipt of the contribution in two letters to Michael Hsu, a special assistant at the Taipei Economic and Cultural Representative Office (TECRO), which functions as Taiwan's unofficial embassy in the U.S.<sup>717</sup> Similarly, RNC Chairman Haley Barbour wrote to Jason Hu, Taiwan's representative to the U.S., and thanked him for the contribution.<sup>718</sup> In his letter to "Ambassador Hu," Mr. Barbour wrote that PCF's "willingness to underwrite our Member Trade Briefing is greatly appreciated and enables NPF to continue to develop and advocate good international policy."<sup>719</sup>

The combined evidence developed by the Senate investigation and this Committee's investigation makes the activities of the NPF perhaps the most serious example of potentially illegal foreign contributions making their way into the U.S. electoral system. Unlike the allegations involving the DNC, the evidence involving the NPF directly implicates a national political party, the RNC, and its Chairman, Haley Barbour, in a scheme to solicit foreign campaign contributions.

#### 4. Contributions to Republicans from Ted Sioeng

A major figure in the Committee's investigation into possible foreign contributions is Ted Sioeng. Chairman Burton has described Mr. Sioeng as "an Indonesian-born businessman who travels on a Belize passport, suspected by committee members of working, along with his family, on behalf of the Chinese Government interests in the United States."<sup>720</sup> Mr. Sioeng's business interests include the export of cigarettes manufactured by the Red Pagoda company, which is owned by the Chinese government, to the United States and other countries. According to Chairman Burton, Red Pagoda cigarettes are "a convenient way to get money into this country"<sup>721</sup> and could be "used as a vehicle for the Chinese government to funnel money into the United States."<sup>722</sup>

News reports have suggested that law enforcement authorities suspect that Mr. Sioeng may have ties to the Chinese government. For example, Newsweek reported that "The FBI suspects that Chinese may have used Sioeng as a 'cutout'—a front man to make illegal contributions appear legitimate."<sup>723</sup> Similarly, the Washington Post reported that law enforcement authorities "had credible intelligence information indicating [Sioeng] acted on behalf of China to influence U.S. elections with campaign contributions."<sup>724</sup>

As discussed in Part III, the Committee's investigation into Mr. Sioeng was inconclusive. The investigation did not substantiate the allegations that Mr. Sioeng is an agent of the Chinese government.

<sup>717</sup> Id. One of the letters states: "Thank you so much for your generous contribution."

<sup>718</sup> Letter from Haley Barbour to Jason Hu (Aug. 22, 1996) (NPF 003203) (printed in Senate Minority Report, 4772).

<sup>719</sup> Id.

<sup>720</sup> Rep. Dan Burton, Congressional Record, H3054 (May 12, 1998).

<sup>721</sup> Id.

<sup>722</sup> Statement of Chairman Burton, House Committee on Government Reform and Oversight, Business Meeting (May 13, 1998).

<sup>723</sup> A Break in the Case, Newsweek (May 19, 1997).

<sup>724</sup> Senate Panel is Briefed on China Probe Figure; Officials Say Evidence May Link L.A. Businessman to Election Plan, Washington Post (Sept. 12, 1997).

At the same time, the investigation did not conclusively exonerate Mr. Sioeng.

The Committee's investigation did demonstrate, however, that it was Republicans—not Democrats—who had the closest personal and political ties to Mr. Sioeng. Although Chairman Burton repeatedly denied minority requests to fully investigate the links between Mr. Sioeng and senior Republican leaders, enough evidence was obtained by the Committee to show that Mr. Sioeng has ties to major Republican leaders, candidates, and organizations.

Most of these ties centered around Mr. Sioeng's relationship with California State Treasurer Matthew K. Fong, a Republican who is currently running for the United States Senate. The Committee's investigation revealed that Mr. Sioeng and his family were major financial supporters of Mr. Fong's campaigns, as well as family friends and acquaintances. Indeed, the only contributions made by Mr. Sioeng personally were \$50,000 in contributions he made to Mr. Fong. The Committee's investigation also revealed that Mr. Sioeng enjoyed personal access to Speaker of the House Newt Gingrich.

The majority report concludes that "many fundamental questions remain unanswered" in the Committee's investigation. The minority agrees that Mr. Sioeng's activities merit further investigation, but it is his ties to Republicans—not Democrats—that would seem to warrant the closest scrutiny.

*a. Ted Sioeng's Relationship with Matt Fong*

The elected official with the closest relationship with Ted Sioeng is California State Treasurer Matt Fong, who is currently the Republican candidate for the U.S. Senate in California. No other elected official—either Democratic or Republican—had a personal relationship with Mr. Sioeng as close as Mr. Fong's. Moreover, Mr. Fong was the single largest individual recipient of Mr. Sioeng's campaign contributions.

The Committee took the deposition of Mr. Fong on March 2 and April 9 of 1998. Mr. Fong's deposition was also taken by the Senate Governmental Affairs Committee on September 19, 1997. According to Mr. Fong, he first met Mr. Sioeng in 1988, at a Republican rally held in Los Angeles.<sup>725</sup> After their initial meeting, the two developed a friendship based on regular contact at Asian-American community events. Mr. Fong told the Committee that the Sioeng family was very active in Chinese community activities and charities, and that he would frequently see them at various community events.<sup>726</sup> In September 1994, the Sioeng family made its first contribution to Mr. Fong when Jessica Elnitiarta, Ted Sioeng's oldest daughter, contributed \$2,000 to Mr. Fong's campaign for State Treasurer.<sup>727</sup>

In November 1994, Mr. Fong was elected California State Treasurer. After the election, Mr. Fong's campaign suffered from a debt of several hundred thousand dollars.<sup>728</sup> As a result, Mr. Fong continued fundraising after the election, soliciting Mr. Sioeng and his

<sup>725</sup> Deposition of Matthew K. Fong, v. 1, 15 (Mar. 2, 1998).

<sup>726</sup> Id. at v. 1, 16.

<sup>727</sup> Id. at v. 1, 18–19.

<sup>728</sup> Id. at v. 1, 21.



family for contributions.<sup>729</sup> His appeal to the Sioeng family centered around two \$100,000 contributions he received in late 1994 from San Diego Chargers owner Alex Spanos. Mr. Spanos, who is of Greek-American descent, had urged Mr. Fong to challenge the Chinese-American community to match the large contributions.<sup>730</sup> At the end of 1994 and beginning of 1995, Mr. Fong conveyed that challenge to Mr. Sioeng and his family whenever he saw them.<sup>731</sup>

In April 1995, Mr. Fong visited Mr. Sioeng's office.<sup>732</sup> As discussed below, Mr. Fong gave conflicting testimony concerning this April meeting with Mr. Sioeng. It is undisputed, however, that the meeting resulted in \$50,000 in contributions to Mr. Fong's campaign by Mr. Sioeng. Those contributions came in the form of two checks drawn on the account of Sioeng San Wong, which is Ted Sioeng's Chinese name.

These contributions appear to be illegal under federal law, which provides that it is illegal for a foreign national "to make any contribution of money or other thing of value . . . in connection with an election to any political office."<sup>733</sup>

The Sioeng family's final contribution to Mr. Fong's campaign was a \$50,000 contribution on December 14, 1995, from a Sioeng family company, Panda Estates Investment, Inc. Four days later, Mr. Fong wrote a letter of welcome for an international badminton tournament being hosted and organized by the Sioeng family. Mr. Fong denied that there was any connection between the \$50,000 contribution and his letter.<sup>734</sup>

The \$102,000 in total campaign contributions made by the Sioeng family to Mr. Fong's campaigns make Mr. Fong the largest individual beneficiary of the Sioeng family's political donations. The relationship between Mr. Fong and the Sioeng family, however, extends beyond the family's support for Mr. Fong's political career. The evidence shows that Mr. Fong also maintained a personal relationship with the family. He attended the weddings of two of Mr. Sioeng's daughters and gave a toast at one of those weddings.<sup>735</sup> Indeed, Mr. Fong once told the San Francisco Chronicle that Mr. Sioeng was "an old friend."<sup>736</sup>

In April 1997, Mr. Sioeng's political contributions to Mr. Fong's campaign began to receive significant press scrutiny. Shortly thereafter, Mr. Fong's campaign returned the contributions.

#### *b. Ted Sioeng's Relationship with Speaker Gingrich*

Evidence developed by the Committee demonstrates that through his relationship with Mr. Fong, Mr. Sioeng gained personal access

<sup>729</sup> Id. at v. 1, 22.

<sup>730</sup> Id. at v. 1, 26.

<sup>731</sup> Id. at v. 1, 27.

<sup>732</sup> Id. at v. 1, 28.

<sup>733</sup> 2 U.S.C. § 441e; 11 CFR 110.4(a) ("A foreign national shall not directly or through any other person make a contribution . . . in connection with any local, State, or Federal office"). The recent decision by the United States District Court for the District of Columbia, finding that it is legal for a foreign national to contribute "soft money" to a political party, concerned contributions to a national party committee. See *United States v. Trie*, Crim. No. 98-0029-1, Slip. Op. (D.D.C. Oct. 9, 1998). The opinion, however, does not address contributions to state candidates.

<sup>734</sup> Deposition of Matthew K. Fong, v. 2, 107.

<sup>735</sup> Deposition of Glenville Stuart, 94 (Feb. 18, 1998); Deposition of Matthew K. Fong, v. 1, 16; Treasurer May Return Contribution, San Francisco Chronicle (Apr. 22, 1997).

<sup>736</sup> Id.

to Speaker Gingrich. In July of 1995, approximately three months after accepting \$50,000 from Mr. Sioeng, Mr. Fong invited Mr. Sioeng to a private meeting with Speaker Gingrich in the Speaker's Capitol office.<sup>737</sup> Mr. Sioeng's initial reaction was "Who's Speaker Gingrich and what's a Speaker?"<sup>738</sup> Mr. Fong explained who Speaker Gingrich was and Mr. Sioeng called back a short time later to ask if his son could also attend the meeting.<sup>739</sup> When Mr. Fong indicated that his son could attend, Mr. Sioeng accepted the invitation.<sup>740</sup> Mr. Fong testified that he extended this invitation to Mr. Sioeng out of gratitude for the large contributions he had received.<sup>741</sup> He also acknowledged his hope that the invitation would make Mr. Sioeng more willing to make contributions in the future.<sup>742</sup>

The meeting with the Speaker occurred on July 12, 1995.<sup>743</sup> Mr. Fong testified that he had an open invitation to stop by the Speaker's office and bring guests.<sup>744</sup> The actual scheduling of the visit, however, was arranged by Steve Kinney.<sup>745</sup> Mr. Kinney served as chief strategist, fundraiser, and pollster for Mr. Fong's 1994 campaign.<sup>746</sup> Mr. Kinney had also previously done fundraising and advance work for Speaker Gingrich.<sup>747</sup> After the meeting, Mr. Fong went to dinner with Mr. Sioeng and his son-in-law.<sup>748</sup>

According to Mr. Fong, "shortly after" the meeting in the Speaker's office, Mr. Kinney asked for, and received, permission from Mr. Fong to approach Fong campaign donors and invite them to events involving the Speaker.<sup>749</sup> Later that month, Mr. Fong was contacted by a member of the Sioeng family, who told him that they had been solicited for contributions by Steve Kinney on behalf of Speaker Gingrich.<sup>750</sup> Mr. Fong indicated that he felt that supporting the Speaker was a good idea.<sup>751</sup>

On July 18, 1995, less than one week after the meeting with Speaker Gingrich, a Sioeng family corporation, Panda Industries, Inc., made a \$50,000 contribution to the National Policy Forum, a subsidiary of the Republican National Committee. The day after the contribution, at Mr. Fong's suggestion, Mr. Sioeng was seated next to the Speaker at an Asian-American "outreach event" held in Beverly Hills, California.<sup>752</sup> According to the Chinese language newspaper, the China Press, the central topic of discussion at the event was Sino-U.S. relations, and Mr. Sioeng gave the Speaker a lengthy explanation of his views on U.S. China policy.<sup>753</sup> Whether

<sup>737</sup> Deposition of Matthew K. Fong, v. 1, 65.

<sup>738</sup> Id. at v. 1, 68.

<sup>739</sup> Id. at v. 1, 68-69; the "son" who attended the meeting was actually a son-in-law.

<sup>740</sup> Id. at v. 1, 68; v. 2, 145.

<sup>741</sup> Id. at v. 1, 68; v. 2, 145.

<sup>742</sup> Id. at v. 2, 145.

<sup>743</sup> Id. at v. 1, 65.

<sup>744</sup> Id. at v. 1, 6-7.

<sup>745</sup> Id. at v. 1, 71-72.

<sup>746</sup> Id. at v. 19-20; v. 2, 147 ("Steve Kinney was responsible for my entire fundraising for State Treasurer . . .").

<sup>747</sup> Id. at v. 1, 72, 75 Deposition of Steven Kinney, Senate Committee on Governmental Affairs, 7-8 (Sept. 23, 1997).

<sup>748</sup> Deposition of Matthew K. Fong, v. 1, 76.

<sup>749</sup> Id. at v. 1, 75.

<sup>750</sup> Id. at v. 1, 77.

<sup>751</sup> Id. at v. 1, 77.

<sup>752</sup> State Treasurer Linked to Asian Funds, Records Show, Los Angeles Times (Feb. 25, 1998).

<sup>753</sup> China Press (July 22, 1995).

Mr. Sioeng had a similar discussion with the Speaker during their private meeting remains unknown.

Mr. Fong insisted that Mr. Sioeng's attendance at the Beverly Hills event was "unrelated" to fundraising.<sup>754</sup> Instead, he testified that the invitation was based on a list of about 20 Asian-American community leaders he provided to the Speaker's office at their request.<sup>755</sup>

Mr. Fong acknowledged, however, that his wife Paula received a 10% commission from the NPF for the Sioeng family's contribution.<sup>756</sup> Documents obtained by the Committee show that Mrs. Fong requested the commission on July 28, 1995, in an invoice sent to Joe Gaylord at the Republican National Committee. Mr. Gaylord previously served as one of Speaker Gingrich's most senior aides.

In December 1995, Speaker Gingrich wrote a letter welcoming participants to an international badminton tournament organized by the Sioeng family.<sup>757</sup> This letter immediately preceded a \$50,000 contribution by a Sioeng family company to the Fong campaign.<sup>758</sup>

*c. Unanswered Questions Regarding Mr. Sioeng's Relationship With Matt Fong and Speaker Gingrich*

Although the Committee took Mr. Fong's deposition, Chairman Burton refused to pursue the investigation of Mr. Sioeng's relationship with Mr. Fong and Speaker Gingrich any further. On March 20, 1998, Rep. Waxman wrote Chairman Burton to request that information about Mr. Sioeng be obtained from the Speaker's office, Mr. Kinney, and Mr. Gaylord. Chairman Burton, however, did not respond to Rep. Waxman's request. Rep. Waxman also wrote Chairman Burton on June 11, 1998, June 16, 1998, and August 26, 1998, to request a further investigation into Mr. Sioeng's ties with Speaker Gingrich. Rep. Waxman wrote: "To conduct a fair and impartial investigation into all of Mr. Sioeng's potentially improper contributions, the Committee must investigate Mr. Barbour, Mr. Gaylord, Mr. Kinney, and others to ascertain their first-hand knowledge of Mr. Sioeng and the nature of the monies they solicited from Mr. Sioeng."<sup>759</sup> Chairman Burton again did not respond to these requests.

As a result of Chairman Burton's refusal to investigate, many important questions remain unanswered. For example, without obtaining information from the Speaker's office and Mr. Kinney, the Committee cannot determine whether the Speaker knew of Mr. Sioeng's foreign nationality and his ties to the Chinese government prior to their meeting in the Speaker's office. Similarly, without obtaining testimony from Mr. Gaylord, Mr. Kinney, and members of the Speaker's staff, the Committee cannot determine if the Speaker or the RNC knew of Mr. Sioeng's nationality or his ties to the Chi-

<sup>754</sup> Deposition of Matthew K. Fong, v. 1, 82.

<sup>755</sup> Id. at v. 1, 82.

<sup>756</sup> Id. at v. 1, 89.

<sup>757</sup> Id. at v. 2, ex. 8.

<sup>758</sup> Although the Speaker's letter is not dated, Mr. Fong testified that he helped the Sioeng family obtain welcome letters from the Speaker and California Governor Pete Wilson prior to the Contribution. Id. at v. 2, 102.

<sup>759</sup> Letter from Rep. Henry Waxman to Chairman Dan Burton (Aug. 26, 1998).

nese government when the NPF accepted the \$50,000 contribution from Panda Industries, a Sioeng family company.

The Committee also cannot determine without further investigation whether Mr. Fong testified truthfully about his relationship with Mr. Sioeng. There are several troubling aspects of Mr. Fong's testimony that merit further investigation. For example, Mr. Fong testified that he did not become aware of the \$50,000 contribution from one of the Sioeng family's businesses to the NPF until it was reported in the press approximately two years after it was made.<sup>760</sup> This seems implausible, given that (1) his wife received a \$5,000 commission on the contribution, (2) the contribution was solicited by his chief fundraiser, Steve Kinney, and (3) Mr. Fong himself was involved in the solicitation of the contribution.<sup>761</sup> Without deposing Mr. Kinney, Mrs. Fong, and others, the Committee cannot assess the credibility of Mr. Fong's denial.

There are also substantial discrepancies in Mr. Fong's testimony that deserve further investigation. One area of Mr. Fong's testimony which involves a clear and unambiguous contradiction is his testimony as to whether he saw a \$20,000 contribution check when it was handed to him by Mr. Sioeng. In his Senate testimony, Mr. Fong denied ever seeing the check, stating that it was given to him in a sealed envelope which he gave unopened to his staff.<sup>762</sup> In his House testimony, however, Mr. Fong contradicted his Senate testimony and acknowledged seeing the check.<sup>763</sup>

This changing testimony raises the possibility that Mr. Fong has testified falsely to conform his testimony to his legal defense. It is undisputed that Mr. Fong accepted a contribution from a foreign national. When questioned by Senate investigators, Mr. Fong asserted that he did not knowingly accept a contribution from a foreign national because he thought the contribution came from Mr. Sioeng's son or son-in-law.<sup>764</sup> This defense is called into question, however, by the fact the Mr. Fong personally solicited Mr. Sioeng, not his son or son-in-law, for the contribution; accepted the contribution from Mr. Sioeng, not his son or son-in-law; and thanked Mr. Sioeng, not his son or son-in-law, for the contribution.<sup>765</sup> Mr. Fong's new House testimony allows him to claim that he saw an unfamiliar name, Sioeng San Wong, on the check. According to this version, Mr. Fong can claim that the unfamiliar name led him to the conclusion that the contribution was not from Mr. Sioeng personally.

Other areas of Mr. Fong's testimony also raise questions as to the veracity of Mr. Fong's account. In the Senate, Mr. Fong testified that he informed Mr. Sioeng about restrictions on foreign contributions in response to Mr. Sioeng's confusion as to contribution limits in different jurisdictions.<sup>766</sup> Mr. Fong's testimony before the House on the subject is quite confused. After initially reiterating his Senate testimony that Mr. Sioeng inquired as to the differences

<sup>760</sup> Deposition of Matthew K. Fong, v. 1, 87; Senate Deposition of Matthew K. Fong, 49.

<sup>761</sup> Mr. Fong testified that he gave Mr. Kinney permission to solicit the Sioeng family for the contribution, and that when contacted by the Sioeng family, he encouraged them to contribute to the Speaker. *Id.* at 75-77.

<sup>762</sup> Senate deposition of Matthew K. Fong, 40 (Sept. 19, 1997).

<sup>763</sup> Deposition of Matthew K. Fong, v. 1, 61.

<sup>764</sup> Senate deposition of Matthew K. Fong, 23.

<sup>765</sup> Senate Minority Report, 5577-5578 (Mar. 10, 1998).

<sup>766</sup> Senate deposition of Matthew K. Fong, 34.

in contribution limits between different jurisdictions,<sup>767</sup> Mr. Fong later testified that he shared the rules when Mr. Sioeng raised the possibility of obtaining contributions from his business partners overseas.<sup>768</sup> When pressed about his inconsistent testimony, Mr. Fong ultimately admitted that he could not recall the specifics of the conversation beyond having shared restrictions on foreign contributions with Mr. Sioeng.<sup>769</sup>

Moreover, Mr. Fong first told House investigators that his meeting with Mr. Sioeng at which he received the \$50,000 contribution was unscheduled;<sup>770</sup> then he reversed himself and stated that he had called ahead to schedule the appointment.<sup>771</sup>

In sum, although the majority refused to thoroughly investigate the contributions Mr. Fong received from Mr. Sioeng, the information the Committee did receive raises serious questions and does not support the majority's premature conclusion that Mr. Fong did not knowingly accept foreign contributions from Mr. Sioeng. The record is clear that:

- Mr. Fong and Mr. Sioeng had a close personal relationship and that Mr. Fong was the only elected official to receive a personal contribution from Mr. Sioeng. In total, the Sioeng family contributed \$102,000 to the Fong campaign over a 15-month period.

- Mr. Fong's testimony to House investigators fundamentally conflicts with his previous Senate deposition. On basic facts—such as whether he actually saw Mr. Sioeng's check and the circumstances of his meeting with Mr. Sioeng—Mr. Fong has given different answers under oath to identical questions.

In light of the inconsistent and implausible aspects of Mr. Fong's testimony, it is a possibility he has made false statements under oath. Further investigation is clearly warranted in this matter.

##### 5. Other Foreign Contributions to Republicans

Additional examples of foreign contributions to Republicans, including contributions from foreign governments, have been reported in the press and documented in the Senate minority report. The majority turned a blind eye to this conduct, however, and instead focused solely on foreign contributions to Democratic entities.

Examples of foreign contributions to Republicans which were largely ignored by the Committee include:

- *Contributions from Thomas Kramer.* On July 18, 1997, German national Thomas Kramer was fined \$323,000 by the FEC for making illegal foreign campaign contributions. This was the largest fine ever imposed by the FEC on an individual. Mr. Kramer contributed more than \$400,000 to federal, state, and local campaigns during the 1994 election cycle, including \$205,000 to the Florida Republican party. The Florida Republicans were fined \$82,000 by the FEC for accepting Mr. Kramer's contribution, but still refuse to return \$95,000 of the contribution.<sup>772</sup> Although the Committee held

<sup>767</sup> Deposition of Matthew K. Fong, v. 1, 24.

<sup>768</sup> Id. at v. 1, 24.

<sup>769</sup> Id. at v. 1, 57.

<sup>770</sup> Id. at v. 1, 28.

<sup>771</sup> Id. at v. 1, 49–50.

<sup>772</sup> See, e.g., \$323,000 Fine Levied for Foreign Contributions, Washington Post (July 19, 1997); Sen. Mack Returned Money to German Businessman Two Years Ago, Gannett News Service (July 18, 1997).

a hearing on Mr. Kramer's contributions, that hearing focused almost exclusively on his links to Howard Glickin, a Democratic fundraiser.<sup>773</sup>

- *Contributions from Michael Kojima.* Michael Kojima was called "America's worst deadbeat dad" by the Los Angeles District Attorney's office.<sup>774</sup> He contributed \$598,770 to the Republican party during the 1992 election cycle, including \$500,000 to the President's Dinner which bought him a seat at President Bush's table. The money for one \$100,000 contribution was written on an account that would have had insufficient funds but for a wire transfer from a foreign corporation that was received before the check cleared. Mr. Kojima brought five Japanese businessmen to the dinner. It has been reported that these businessmen paid Mr. Kojima as much as \$175,000 each to attend the event. In return for Mr. Kojima's contributions, the RNC arranged for 10 meetings between Mr. Kojima and U.S. Embassy personnel in Asia, and wrote at least 15 letters on Mr. Kojima's behalf. At the time of the contribution, Mr. Kojima was almost a million dollars in debt for failure to pay child support or his business creditors.<sup>775</sup>

- *Contributions to the Jesse Helms Center.* The Jesse Helms Center, which was established to honor Sen. Helms, house his archives, and host conservative speakers, solicited at least \$325,000 from foreign governments, including a \$225,000 contribution from the government of Taiwan in 1993 and \$100,000 from the government of Kuwait following the Persian Gulf war in 1991. The Taiwanese contribution followed a conversation between Sen. Helms and a high-ranking Taiwanese official. At the time, Sen. Helms was the ranking minority member of the Senate Foreign Relations Committee.<sup>776</sup> Because the Center is a charitable foundation, foreign governments can make contributions that may be prohibited under federal election law, the donors are not subject to federal contribution limits, and the donations are not required to be publicly disclosed.

#### 6. *Contributions to Republicans from U.S. Subsidiaries of Foreign Companies*

The controversy over fundraising during the 1996 elections began in September 1996, after newspapers reported that Cheong Am America, a U.S. subsidiary of a South Korean company, contributed \$250,000 to the DNC. After the discovery of this and other contributions that were subsequently returned by the DNC, RNC Chairman Haley Barbour said, "I'll tell you right now, you won't find any contribution like this in our records."<sup>777</sup> In fact, during the 1996 election cycle, the Republican party received far more contributions (\$8.4 million) from American subsidiaries of foreign com-

<sup>773</sup> House Committee on Government Reform and Oversight, Hearing on Federal Election Commission Enforcement Actions: Foreign Campaign Contributions and other FECA Violations, 105th Cong., 2d Sess. (Mar. 31, 1998).

<sup>774</sup> Funds Not by the (Bank) Book: GOP, New York Daily News (Oct. 15, 1996).

<sup>775</sup> Senate Minority Report, 5413-5572.

<sup>776</sup> See, e.g. Foundation for Special Interests: Sen. Helms's Charity Gets Large Gifts From Taiwan, Kuwait, Tobacco, Washington Post (Oct. 26, 1996).

<sup>777</sup> Republicans Return Illegal \$15,000 Donation from Canadian Company, Roll Call (Oct. 21, 1996).

panies than did the Democratic party (\$4.1 million).<sup>778</sup> Some of the largest contributions to Republicans from foreign corporations include:

- *Brown & Williamson Tobacco Corp.* Brown and Williamson Tobacco Corp., a cigarette manufacturer, is the U.S. subsidiary of British-owned B.A.T. Industries. The company contributed \$1 million during the 1996 election cycle, all but \$83,000 of it to Republicans.<sup>779</sup>

- *News Corp.* News Corp. is a foreign media conglomerate owned by Rupert Murdoch. Four subsidiaries of News Corp. contributed almost \$1 million during the 1996 election cycle, all but \$94,000 of it to Republicans.<sup>780</sup>

- *Glaxo Wellcome Inc.* Glaxo Wellcome is a U.S. subsidiary of the British pharmaceutical company of the same name. The company contributed \$898,954 in the 1996 elections, including \$772,729 to Republicans.<sup>781</sup>

#### C. THE RELATIONSHIP BETWEEN ACCESS TO REPUBLICAN LEADERS AND CAMPAIGN CONTRIBUTIONS

Political contributions to both the Democratic and Republican Party have substantially increased access for wealthy individuals and organizations to government officials. The practice of providing political contributors special access skews our democratic process. It means that well-funded special interests have more opportunity than the average citizen to make their views known to decision makers and to exert influence on government operations. It is also clearly a bipartisan practice.

##### 1. *The Sale of Access by Republican Congressional Leaders*

In 1997, even as congressional Republicans leveled public criticism at President Clinton and the Democratic Party regarding contribution-for-access allegations, the Republican Party provided big donors with special access to members of Congress. For example:

- In February 1997, the RNC rewarded individuals and companies that had contributed \$175,000 or more over four years to the RNC with a three-day gathering involving elected Republican leaders. This event, held at the Breakers Hotel in Florida, featured briefings and speeches. Policy makers that attended included Senate Majority Leader Trent Lott, Speaker Gingrich, and House Appropriations Committee Chairman Bob Livingston, among others.<sup>782</sup>

- In April 1997, Senate Republicans offered \$5,000 tickets to a "policy forum" with Majority Leader Lott and other Republican colleagues.<sup>783</sup>

<sup>778</sup>Subsidiaries of Foreign Corporations Big Political Donors, Associated Press (May 20, 1997).

<sup>779</sup>Id.

<sup>780</sup>Id.

<sup>781</sup>Id.

<sup>782</sup>Republican Leaders Entertain Party's Big Donors at Luxurious Florida Resort, Washington Post (Feb. 21, 1997); GOP's Reward for Top Donors: 3 Days With Party Leaders, New York Times (Feb. 20, 1997).

<sup>783</sup>\$5,000 Donors Invited to GOP 'Forum,' Washington Post (Mar. 12, 1997).

- In May 1997, the Republican National Committee promised contributors who donated or raised \$250,000 breakfast and photographs with Speaker Gingrich and Majority Leader Trent Lott.<sup>784</sup>

- In June 1997, the annual fund-raising dinner of the National Republican Senatorial Committee and the National Republican Congressional Committee offered \$100,000 contributors a long list of special benefits, including “a breakfast with the House Republican leadership; a luncheon with the Senate GOP leaders; an ‘afternoon forum’ with Senate Majority Leader Trent Lott . . . and Speaker Newt Gingrich”; and “a predinner reception with congressional GOP leaders.”<sup>785</sup>

There are many other examples of Republican members of Congress providing special attention and access to big Republican contributors, including some occasions where congressional buildings were used to solicit campaign contributions. For example, as discussed in Part I.A.4.c, the 1995 Republican Senate House Dinner invitation promised contributors direct access to Republican Party leaders in buildings owned by Congress.<sup>786</sup> Speaker Gingrich has even allegedly sold access to the State of the Union address to Congress. In January 1991, according to media reports, members of his political action committee, GOPAC, were invited to drink champagne in his office in the Capitol as President Bush delivered the State of the Union address. These GOPAC members later received a tour of the Capitol.<sup>787</sup>

One of the most blatant access-for-contributions schemes is the so-called “season-ticket” program established by the Republican Party for donors who contribute at least \$250,000. According to the New York Times, the Republican Party not only offered these contributors “the smorgasbord of perks, like access to the party’s private skybox and a photo session with the Republican nominees” at the Republican convention, but also provided them with special “staff members to help with problems in Washington.”<sup>788</sup> A senior executive whose corporation was a “season ticket holder” reportedly stated that the \$250,000 season ticket “was pitched as an entree . . . to ‘the best access to Congress.’”<sup>789</sup> As the New York Times reported, donors understood the purpose of the special staff to be “to arrange meetings with members of Congress and help them find their way around Washington.”<sup>790</sup>

## 2. *The Sale of Access by Prior Republican Administrations*

The sale of access to big political donors was also common in past Republican administrations. As described in the minority report in the Senate Governmental Affairs Committee’s recent campaign finance investigation, for example, dozens of meetings, dinners, and

<sup>784</sup> GOP Seeks \$250,000 Contributors, St. Louis Post-Dispatch (Apr. 20, 1997).

<sup>785</sup> A Hot Meal Ticket, National Journal (May 17, 1997).

<sup>786</sup> Invitation from the Republican members of the United States Senate and House of Representatives to the 1995 Republican Senate House Dinner.

<sup>787</sup> Gingrich Traded Access for Funds—‘Pot Calling Kettle Black,’ Atlanta Constitution (March 6, 1997).

<sup>788</sup> \$250,000 Buys Donors ‘Best Access to Congress,’ New York Times (Jan. 27, 1997).

<sup>789</sup> Id.

<sup>790</sup> Id.



receptions were held at the White House for big Republican donors during the Ford, Reagan, and Bush administrations.<sup>791</sup>

One prominent example involves “Team 100” members, the wealthy individuals that donated over \$100,000 to help elect President Bush. Team 100 members consistently received special attention from the Bush Administration. *Common Cause* magazine, which chronicled the substantial access provided to Team 100 members, concluded: “Team 100 has ensured access and influence in the executive branch while seeking and obtaining executive-branch pork barrel hand-outs; vigorous import-export assistance, high-level intervention on regulatory and other matters; appointments to ambassadorships and federal advisory commissions; [and] broad national policies for wealthy Wall Street, oil, real estate, cable television and other interests.”<sup>792</sup>

### 3. Contributions That May Have Influenced Policy Decisions

Selling access for political contributions is unseemly. Even more disturbing, however, is the fact that special interests, by virtue of their political contributions, have been able to influence and sometimes change public policy decisions. There have been numerous allegations of Republican policy favors in exchange for political contributions in recent years.

One of the most serious examples of an alleged quid pro quo is the \$50 billion tax break that Speaker Gingrich and Majority Leader Lott reportedly included in the 1997 budget deal after the RNC received \$8.8 million in contributions from the tobacco industry.<sup>793</sup> This example is discussed in detail in Part I.A.4.a.

Unfortunately, there are many other examples of the Republican Congress granting policy favors to big contributors. For instance, since 1994, Amway Corporation has contributed over \$3 million to Republican committees, including \$1.7 million in 1994. Amway founder Richard DeVos and his wife also gave \$1 million to the RNC in April 1997. According to media reports, these contributions coincided with significant policy decisions. During congressional consideration of the 1997 budget legislation, Speaker Gingrich worked to secure tax breaks that some estimated “could be worth \$268 million over the next several years” for Amway subsidiaries.<sup>794</sup>

Other examples include:

- Oil, energy, and natural resources industries contributed \$18.3 million to political parties since the beginning of the 104th Congress; \$9.7 million (73%) to Republicans. The 1997 budget deal included a provision to benefit many oil, energy, and natural resources companies by reducing the amount of alternative minimum tax that these companies have to pay by 75% or more. The provision is worth an estimated \$18 billion.<sup>795</sup>

- Texas businessman Harold Simmons and his family contributed at least \$1.5 million to Republican candidates and committees

<sup>791</sup> Senate Minority Report, 7968–77, 8053–56 (appendix to Chapter 28).

<sup>792</sup> Bush’s Ruling Class, *Common Cause Magazine* (April/May/June 1992).

<sup>793</sup> Donors to Campaigns Fared Well in Budget, *Washington Post*, (Aug. 22, 1997); FEC Records.

<sup>794</sup> Clinton to Test Veto Power; Congress Nurtured Special Interests in Tax, Spending Bills, *New Orleans Times-Picayune*, (Aug. 7, 1997); FEC Records.

<sup>795</sup> Tilting the Balance, *Citizen Action* (1997); FEC Records.

since 1980. The 1997 budget deal included a provision that would primarily benefit the sale of sugar beet processing plants by Mr. Simmons's company. Tax experts estimated that \$60 million of the provision's \$84 million tax benefit would go to his firm. President Clinton exercised the line-item veto to strike the tax break.<sup>796</sup>

- Golden Rule Financial Corporation was the top proponent and beneficiary of Medical Savings Accounts (MSAs) as an alternative to the current Medicare system. During the 1994 election cycle, Golden Rule contributed \$620,775 to Republican committees, and its chairman and president contributed over \$152,000 to GOPAC. Following these contributions, Speaker Gingrich supported MSAs as a part of the 1995 Medicare legislation. MSAs also became a prominent feature of the 1996 Republican platform.<sup>797</sup>

During the Bush Administration, many policy favors to contributors reportedly were dispensed by the White House Council on Competitiveness.<sup>798</sup> Operating without public notice or record, under an unwritten "no appeal" rule regarding its decisions, the Council on Competitiveness reviewed numerous federal rules and regulations. According to Bob Woodward and David Broder of the Washington Post, Vice President Quayle and his small council staff changed or attempted to change federal regulations on a range of matters, while "leaving what vice presidential aides call 'no fingerprints' on the results of its interventions."<sup>799</sup>

Major Republican contributors reportedly had tremendous access to the council. According to the Washington Post, Vice President Quayle and council staff held "closed-door roundtables with business people who [had] made sizable contributions to the local or national GOP" during campaign visits to various cities around the country.<sup>800</sup> One sample six-month period reviewed by the media showed that each of the 24 petitioners granted a meeting with the Council on Competitiveness had made significant contributions to the RNC, the Bush-Quayle campaign, or both.<sup>801</sup>

The Council on Competitiveness compiled an extensive record of intervention in federal regulations to benefit major contributors. An article in the Wall Street Journal in October 1992 was titled *Many of Competitiveness Council's Beneficiaries Are Firms That Make Big Donations to the GOP*. The article described how oil industry interests that had donated hundreds of thousands of dollars to the Republican Party worked with the Competitiveness Council to weaken regulations on handling used motor and lubricating oil.<sup>802</sup> The article also reported that Indiana pharmaceutical company Eli Lilly & Co. contributed thousands of dollars to the Bush-Quayle campaign and appeared to have "an inside track at the council." The article noted that, in 1991, "the council asked Lilly to review the council's plan to revamp the Food and Drug Adminis-

<sup>796</sup> President to Use New Veto, Washington Post (Aug. 11, 1997); Tilting the Balance, Citizen Action (1997).

<sup>797</sup> Congressional Record, H62989 (June 13, 1996); Highlights from the 1996 Republican Platform, Boston Globe (Aug. 13, 1996); Favored Few Stand to Gain from Republican Tax Cuts, Washington Post (Dec. 24, 1995); FEC Records.

<sup>798</sup> One of the Council's staff members then was current Rep. David McIntosh, who is now a member of the House Government Reform and Oversight Committee.

<sup>799</sup> Quayle's Quest: Curb Rules, Leave 'No Fingerprints,' Washington Post (Jan. 9, 1992).

<sup>800</sup> Id.

<sup>801</sup> They Can't Compete, Legal Times (Sept. 7, 1992).

<sup>802</sup> Many of Competitiveness Council's Beneficiaries Are Firms That Make Big Donations to the GOP, Wall Street Journal (Oct. 13, 1992).

tration's drug-approval policy—which would greatly benefit Lilly—before the policy was made public.” Also in 1991, the council “asked the EPA to make changes in proposed air-pollution permit rules that jibed almost exactly with requests Lilly had previously made of the EPA.”<sup>803</sup>

Similarly, an article in *Time* described how the council intervened with the Environmental Protection Agency to narrow the definition of “wetlands,” thereby “satisfying a powerful coalition of farmers and builders and reducing America’s wetlands by as much as 30 million acres.” The article stated: “The council is potentially a political gold mine for Quayle, who often refers businesspeople with complaints about government meddling to his eager staff of deregulators.”<sup>804</sup>

#### D. TRIAD MANAGEMENT SERVICES ENGAGED IN QUESTIONABLE PRACTICES TO SUPPORT REPUBLICAN CANDIDATES

Triad Management Services, Inc., is a corporation formed in 1996 which purportedly provided political consulting advice and services with the intent of maximizing the effectiveness of contributions from political conservatives.<sup>805</sup> The minority report in the Senate campaign finance investigation, as well as numerous media accounts, suggests that, through Triad, a few wealthy individuals spent millions of dollars to influence and perhaps even change the outcome of certain 1996 federal elections, without disclosing their identities. The Senate minority report concluded that this type of secret effort “fundamentally undermines the spirit and letter of current campaign finance laws.”<sup>806</sup> Triad’s activities were undertaken exclusively to benefit Republicans.

As discussed in Part I.A.4.e, the minority has repeatedly requested that the Committee investigate Triad, and the Chairman has repeatedly promised to do so. At the November 6, 1997, Committee meeting, Rep. Maloney asked Chairman Burton, “I would like to know when you are going to issue subpoenas to the groups and individuals involved in the Triad Management scheme to violate or evade the campaign finance laws?” Chairman Burton responded, “We are looking at it. And we very well may do that.”<sup>807</sup> At the following hearing, Rep. Barrett asked Chairman Burton, “What about the Triad Management? Are we looking at that, Mr. Chairman?” Chairman Burton replied, “I am going to send a subpoena to Triad. Does that satisfy you?”<sup>808</sup> One month later at another Committee hearing, Rep. Lantos asked FBI Director Louis Freeh to look into Triad’s activities. In response, Chairman Burton stated, “There will be, as I said before, an investigation into the Triad matter.”<sup>809</sup>

<sup>803</sup> *Id.*

<sup>804</sup> *Need Friends in High Places?* *Time* (Nov. 4, 1991).

<sup>805</sup> *National Journal* (Sept. 28, 1996).

<sup>806</sup> Senate Minority Report, 6290.

<sup>807</sup> House Committee on Government Reform and Oversight, Hearings on White House Compliance with Committee Subpoenas, 105th Cong., 1st Sess. 204 (Nov. 7, 1997).

<sup>808</sup> House Committee on Government Reform and Oversight, Hearings on Johnny Chung: His Unusual Access to the White House, His Political Donations and Related Matters, 105th Cong., 1st Sess. 89 (Nov. 13, 1997).

<sup>809</sup> House Committee on Government Reform and Oversight, Hearings on The Current Implementation of the Independent Counsel Act, 105th Cong., 1st Sess., vol. 2, 47, 49 (1998).

Nevertheless, despite the Chairman's promises and the substantial evidence of campaign finance improprieties, the Committee has not issued one document subpoena or requested any depositions related to Triad.

At the October 8, 1998 Committee meeting, Chairman Burton attempted to explain the Committee's lack of action on Triad. He stated:

The minority in the Senate worked very hard on the Triad issue. And we received all of the information after the Thompson Committee concluded its investigation. And we received the information on Triad. It was thoroughly investigated by the Senate Oversight Committee. And they found no illegal activities. . . . After you raised the issue before this committee, we did take a thorough look at the report that the Senate sent over to us, and there was no need to duplicate their efforts.<sup>810</sup>

The Chairman's statement, however, is in conflict with the facts. The Senate minority report provided substantial evidence indicating that Triad may have engaged in a range of possibly improper or illegal activities, including participating in schemes to evade campaign contribution limits and disclosure requirements, and coordinating with campaigns on political advertising. Moreover, Triad, its affiliates, and other associated persons and entities did not make available to the Senate the information necessary to resolve the serious questions surrounding Triad's activities. For example, persons with important roles in Triad activities, including Triad president Carolyn Malenick, either refused to be deposed or appeared but would not answer substantive questions. The Senate Committee did not issue orders to enforce Triad subpoenas and did not subpoena a key Triad-related entity.<sup>811</sup>

Thus, contrary to Chairman Burton's October 8 remarks, the Senate did not have the opportunity to "thoroughly investigate" Triad, and an investigation of Triad by this Committee would not "duplicate" the work of the Senate. In fact, further investigation is absolutely necessary to fill important gaps that remained when the Senate investigation shut down.

### *1. Background on Triad*

Triad's purported purpose is to advise clients on making contributions.<sup>812</sup> However, evidence indicates that Triad was focused on influencing congressional races. Senator Nickles, appearing in a Triad promotional video, described Triad as follows: "[T]his is a very effective organization that is going in and helping us, in those races that are close, those races that are targeted."<sup>813</sup> In that same video, Ms. Malenick states, "If we need to move, or have \$100,000 put in a congressional race tomorrow, where are we going to find

<sup>810</sup> Statement of Chairman Burton, Meeting of the House Committee on Government Reform and Oversight, unofficial transcript, 64-65 (Oct. 8, 1998).

<sup>811</sup> Senate Minority Report, 6291-93.

<sup>812</sup> National Journal (Sept. 28, 1996).

<sup>813</sup> See GOP Critic of Clinton Filmed Promo, Arizona Republic (Nov. 4, 1997).

it?”<sup>814</sup> The Senate minority report concluded that “Triad exists for the sole purpose of influencing federal elections.”<sup>815</sup>

Triad and its affiliates were apparently funded primarily by a few wealthy individuals. The Senate minority report states that Pennsylvania businessman Robert Cone provided a substantial amount of Triad’s funding, in payments totaling at least several hundred thousand dollars.<sup>816</sup> Triad also is affiliated with two “non-profit” organizations, Citizens for Reform and Citizens for the Republic Education Fund,<sup>817</sup> which, according to the Senate minority report, were simply shell companies that have been essentially run by Triad.<sup>818</sup> Two secret trusts, the Personal Trust and the Economic Education Trust, provided the majority of the total contributions received by these groups.<sup>819</sup> The Senate minority report suggests that Mr. Cone funded the Personal Trust, while Charles and David Koch, brothers who control Koch Industries of Wichita, Kansas, funded the Economic Education Trust.<sup>820</sup>

## 2. *Triad’s Alleged Illegal Corporate Contributions*

Campaign finance laws prohibit corporations from making contributions, including providing in-kind services, to political candidates.<sup>821</sup> The Senate minority report found that Triad may have violated these prohibitions. The report asserts that “Triad provided political consulting services to numerous Republican campaigns free of charge,” including conducting fundraising and advising campaigns on strategy and fundraising.<sup>822</sup> For example, after his pre-primary visit with one Republican campaign, a Triad representative noted: “In response to their request, I gave them a plan to work out with regards to fundraising, establishing specific financial goals and programs to achieve those objectives.”<sup>823</sup> Further, on at least two occasions a Triad employee, Meredith O’Rourke, reportedly helped then-Senatorial candidate Sam Brownback make fundraising calls at the NRCC offices.<sup>824</sup> Senate investigators were unable to find evidence that any of the campaigns paid Triad for these services.<sup>825</sup>

Triad also may have illegally facilitated fundraising and advocated the election or defeat of candidates through faxes to its clients. For example, one fax describes “Top Tier Races in Need of Cash” and asks for checks payable to committees affiliated with the

<sup>814</sup> See Web of GOP Donors Studied: Senate Looks into Interconnected Nonprofit Groups That Spent Millions on Election Ads in 1996, *Austin-American Statesman* (Nov. 2, 1997).

<sup>815</sup> Senate Minority Report, 6289.

<sup>816</sup> *Id.* at 6293–94.

<sup>817</sup> According to the Senate minority report, Citizens for Reform and Citizens for the Republic Education Fund claimed tax-exempt status in 1996 under section 501(c)(4) of the tax code, which applies to groups whose primary activity is not lobbying and campaign activities. These groups, however, have apparently conceded that they may not have fit the 501(c)(4) criteria. Senate Minority Report, 6301–02.

<sup>818</sup> *Id.*

<sup>819</sup> *Id.* at 6309.

<sup>820</sup> *Id.* at 6309–10.

<sup>821</sup> 2 U.S.C. § 441b.

<sup>822</sup> Senate Minority Report, 6294–97.

<sup>823</sup> *Id.* at 6352–53, document entitled, “Vince Snowbarger KS03.” Rep. Snowbarger’s chief of staff stated that Mr. Snowbarger also met with Triad officers after the primary election to discuss fundraising. James Kuhnhenh, Political Funds for Kansan Examined, *Democrats Attack Role of GOP Consultants in Snowbarger Campaign*, *Kansas City Star* (Oct. 4, 1997).

<sup>824</sup> Senate Minority Report, 6296.

<sup>825</sup> *Id.* at 6294.

candidates.<sup>826</sup> Another fax stated that Sheila Frahm, Senator Brownback's primary opponent, "must be defeated."<sup>827</sup> If Triad provided free consulting services to campaigns and advocated for candidates,<sup>828</sup> Triad would appear to have made illegal corporate contributions.

### 3. *Triad's Alleged Schemes to Evade Contribution Limits*

According to the Senate minority report, evidence suggests that Triad was involved with schemes to route contributions to campaigns through PACs from individuals who had contributed the legal maximum. As part of these schemes, Triad apparently encouraged campaigns to provide Triad with the names of "maxed out donors."<sup>829</sup> A number of individuals may have participated in schemes with Triad that enabled them to contribute to candidates to whom they had "maxed out."

For example, in the 1996 election cycle, Robert Riley, Jr., contributed the maximum amount allowed to the campaign of his father, Rep. Robert Riley.<sup>830</sup> Between May 9 and May 23, 1996, the junior Mr. Riley also made separate contributions of \$1,000 to four PACs that are on an internal Triad list, and these PACs soon thereafter made contributions to his father's campaign.<sup>831</sup> The younger Mr. Riley told Senate investigators that he "made his contributions on the advice of [Triad president] Malenick."<sup>832</sup> The Senate minority report discusses numerous other examples involving other individuals. The campaigns that allegedly may have benefited from contribution routing schemes include the Steve Stockman campaign, the Ray Clatworthy campaign, the Brian Babin campaign, and the campaigns of Rep. J.C. Watts and Senator Brownback.<sup>833</sup>

### 4. *Triad's Possible Improper Coordination on Political Advertisements*

At a conference in early 1998, Dick Dresner, a consultant who worked with Triad in 1996, reportedly described how individuals can secretly funnel their money into the election process:

Republican consultant Dick Dresner . . . said some very wealthy donors, who want to remain completely anonymous, can establish trusts to distribute their money anonymously to any number of issue-advocacy organizations. Consultants for these organizations then steer this money into very close races, where "your money can be pivotal and the election is just two weeks away." Even if the anon-

<sup>826</sup> Id. at 6296, 6367-68.

<sup>827</sup> Id. at 6296, 6369-70.

<sup>828</sup> The Senate minority report also suggests that Triad may have provided consulting services to the campaigns of Christian Leinbach, Jim Ryun, Steve Stockman, Mark Sharpe, and Jay Mathis. Id. at 6295-96.

<sup>829</sup> For example, the Triad memo describing its consultant's visit to the campaign for Rep. Pete Sessions, who is now a member of the House Committee on Government Reform and Oversight, notes that the campaign "will have a list of their maxed out donors for our inspection as soon as there is a call from Washington." Id. at 6299. Triad memos for visits to the campaigns of Gary Nodler and Ed Merritt also note that those campaigns have "maxed out" donors. In addition, the Senate minority report notes that candidates who provided Triad with the names of potential contributors included Rep. Riley and Rep. Gutknecht. Id. at 6297-301, 6702, 6727-28.

<sup>830</sup> Gerald F. Seib and Glenn R. Simpson, Adviser Helps Political Donors Spread Their Wealth, *Wall Street Journal* (Apr. 10, 1997).

<sup>831</sup> Senate Minority Report, 6297.

<sup>832</sup> Id. at 6298.

<sup>833</sup> Id. at 6297-301.

ymous donor's name emerges once or twice during the campaign, Dresner said, "His role is greatly underestimated."<sup>834</sup>

Mr. Dresner's comments appear to describe the approach that Triad used in funding 1996 political advertisements.

The Senate minority report states that Triad affiliates Citizens for Reform and Citizens for the Republic Education Fund spent between \$3 and \$4 million on advertising in House and Senate races, including over \$1 million on Kansas races.<sup>835</sup> As noted above, the Economic Education Trust and the Personal Trust provided the majority of funding for Citizens for Reform and Citizens for the Republic Education Fund. According to the Senate minority report, evidence indicates that production of at least some of the advertisements involved Triad or its affiliates, in conjunction with vendors, including Mr. Dresner, that were retained by the Economic Education Trust.<sup>836</sup> The donors behind the trust also appear to have provided input into the preparation of these ads. Senate investigators were unable to discern the exact nature of these arrangements, as Mr. Dresner, Triad attorney Mark Braden, and Ms. Malenick refused to appear for depositions or answer substantive questions.<sup>837</sup> However, based on the existing evidence, the Senate minority report suggests that Triad enabled contributors to fund political advertising without having to disclose their identities.<sup>838</sup>

Evidence also suggests that Triad and its affiliates collaborated with campaigns in the preparation of some, if not all, of the advertisements it funded.<sup>839</sup> The Senate minority report asserts that, because of the level of collaboration that occurred and the content of the ads, "Triad's advertising expenditures constituted disguised contributions to the candidates."<sup>840</sup> If this is the case, then Triad helped contributors support advertisements while evading contribution limitations and disclosure requirements.

Triad's advertising effort in Kansas, in particular, deserves examination by the Committee, since the Committee has an ongoing investigation of alleged conduit payments to the Kansas Democratic Party in 1996. The Senate minority report states that Triad and its affiliates allegedly spent close to \$1 million on four of the six Kansas federal races in 1996, and that it is likely a few wealthy individuals funded most if not all of that effort. According to the Senate minority report, one of the three House candidates on whom Triad spent money won by less than 2% of the vote; the others won by less than 5%.<sup>841</sup> Further, while the Kansas Senate race between Jill Docking and Sam Brownback was close in October 1996, Senator Brownback won by a 54% to 43% margin after Triad's last-

<sup>834</sup> Outside Interest Groups Get Inside Clout With Voters, *Sacramento Bee*, (Feb. 3, 1998).

<sup>835</sup> Senate Minority Report at 6304, 6312. The Kansas races were the contest that resulted in the election of Sen. Sam Brownback, Rep. Snowbarger, Rep. Jim Ryun and Rep. Todd Tiahrt.

<sup>836</sup> *Id.* at 6309-13.

<sup>837</sup> *Id.* at 6311.

<sup>838</sup> *Id.* at 6309-13.

<sup>839</sup> *Id.* at 6304-06. For example, according to the Senate minority report, in the race between Bill Yellowtail and Rep. Rick Hill, Triad sponsored television ads attacking Yellowtail in a way that corresponded to notes in Triad's report on its visit with the Hill campaign a few weeks before the ads ran.

<sup>840</sup> *Id.* at 6306.

<sup>841</sup> *Id.* at 6312.

minute, \$400,000 advertising campaign criticizing Docking.<sup>842</sup> Thus, through Triad, a few individuals may have played a significant role in determining the composition of the Kansas delegation.

The Senate investigation did not have the opportunity to determine definitively the sources of Triad funding and the nature of interaction between Triad and Republican campaigns. It also did not have access to statements that Texas businessman Peter Cloeren made regarding Triad, as discussed above in Part IV.A. Given the serious possible violations that may have occurred involving Triad, and the substantial foundation of evidence already established by the Senate investigation, the Committee's refusal to pursue these issues is unjustified. The lack of interest by Committee Republicans in issues involving Triad underscores the partisan nature of the Committee's investigation.

#### V. THE REPUBLICAN CONGRESS HAS BLOCKED CAMPAIGN FINANCE REFORM AND PLAYED POLITICS WITH THE FEDERAL ELECTION COMMISSION

Our current political landscape is rife with unappealing campaign finance practices. As these views have demonstrated, both Democrats and Republicans have pled guilty to making or arranging illegal conduit contributions. Both Democrats and Republicans have received questionable foreign contributions. And both Democrats and Republicans have provided special access to large contributors in federal buildings.

Unfortunately, many of the most abusive campaign finance practices may not be covered by existing law. As Rep. Waxman wrote in an op-ed at the outset of the campaign finance investigation:

The real scandal is what's legal and common. It is especially important that we stop the explosive growth of soft money and that we shed light on the new strategies the parties use to get around campaign-finance laws, such as having nonprofit groups finance clearly partisan activities. Our goal should be to understand how the process functions at every step, to expose its flaws and to get rid of the loopholes. This approach may not be popular in Congress, but leaders of both parties must realize that the situation has to change.<sup>843</sup>

One dramatic illustration of the deficiencies in existing law is the recent decision of the United States District Court for the District of Columbia on the legality of foreign "soft money" contributions. The court determined that, under current campaign finance laws, it is legal for a foreign national to contribute "soft money" to a political party.<sup>844</sup> "Soft money" includes donations for generic party-building activities, get-out-the-vote activities, and issue advocacy ads, among other activities. Ironically, the district court decision means that most of the allegedly foreign contributions to Democrats that the majority has spent millions investigating may not even be illegal, even if they were contributed by foreign nationals.

<sup>842</sup>The Secret of a Senator's Success?, Washington Post (Dec. 12, 1997).

<sup>843</sup>Rep. Henry A. Waxman, Campaign Reform Made Whole, New York Times (Feb. 28, 1997).

<sup>844</sup>*United States v. Trie*, Crim. No. 98-00291, Slip. Op. (D.D.C. Oct. 9, 1998), 7-10.



In fact, soft money donations are completely exempt from almost all of the provisions of federal election law. As the court stated, “it could not be more apparent that . . . Congress intended the proscriptions of the Federal Election Campaign Act to apply only to ‘hard money’ contributions.”<sup>845</sup> Thus, for example, FECA’s limitation on the size of campaign contributions and its prohibition on corporate contributions do not apply to soft money contributions.<sup>846</sup> More than any other factor, it is this exemption for soft money that has tainted our campaign finance system. As the Washington Post has editorialized, “[t]he fundraising excesses of the last campaign almost all had to do with soft money.”<sup>847</sup>

Regrettably, despite the Committee’s investment of two years and over \$7 million of taxpayer resources in the campaign finance investigation, the Committee failed to even hold one hearing on soft money or the other evident loopholes in our campaign finance laws, and did not propose even minimal legislation correcting the obvious deficiencies in the current law. Moreover, most Republicans on the Committee voted against meaningful campaign finance reform legislation. They also voted against an effort to strengthen the Federal Election Commission, the entity charged with enforcing campaign finance laws.

#### A. THE REPUBLICAN LEADERSHIP DEFEATED CAMPAIGN FINANCE REFORM LEGISLATION

At the same time that the Committee was spending millions of taxpayer dollars to focus attention on alleged campaign finance abuses, Republican leaders in Congress worked vigorously to prevent passage of campaign finance reform. The majority of Republican members on this Committee joined their Republican leaders in this effort to defeat reform. Unfortunately, the effort succeeded on September 10, 1998, when, through a procedural vote, the Senate destroyed any remaining chance of passing reform legislation.<sup>848</sup>

##### 1. *The Campaign Finance Reform Legislation*

The two major comprehensive campaign finance reform bills introduced in this Congress were H.R. 3526, the House legislation known as the “Shays-Meehan” bill, and S. 25, the Senate legislation known as the “McCain-Feingold” bill.<sup>849</sup> One of the main components of both of these bills was a measure to ensure that soft money contributions were subject to FECA restrictions.<sup>850</sup> A third

<sup>845</sup> *Id.*

<sup>846</sup> With respect to contributions to candidates for federal office and to political committees seeking to influence elections at the federal level, FECA imposes the following limits: \$1,000 per election to a candidate for federal office; \$20,000 per calendar year to a national committee of a political party; \$5,000 per calendar year to any other political committee; and \$25,000 aggregate limit per calendar year for all federal candidates and committees. 2 U.S.C. §§ 431, 441a(a). While FECA does not impose a cap on contributions to political parties for other purposes—known as “soft money”—these donations may nevertheless end up indirectly influencing federal elections.

<sup>847</sup> Back to Campaign Finance, Washington Post (July 27, 1998).

<sup>848</sup> Congressional Quarterly Weekly, Senate Vote 264, 2429 (Sept. 12, 1998).

<sup>849</sup> The most recent version of the McCain-Feingold bill was Senate Amendment 3554 to S. 2237 (reprinted in the Sept. 8, 1998 Congressional Record). The Shays-Meehan bill was introduced as H.R. 493, but ultimately was considered as a substitute to H.R. 2183. Therefore, references in this report to provisions of the Shays-Meehan bill will cite to H.R. 2183.

<sup>850</sup> H.R. 2183, Sec. 101; Senate Amendment 3554 to S. 2237, Sec. 101.

leading bill, crafted by House freshmen, was introduced by Reps. Thomas Allen and Asa Hutchinson.<sup>851</sup> The Allen-Hutchinson bill would restrict soft money and increase disclosure requirements for candidates and groups that run issue advertisements, among other provisions. Passage of soft money restrictions, and the other reform measures contained in these bills, should have been a top priority of this Congress.

## 2. *Republican Efforts to Thwart Campaign Finance Reform*

Consideration of campaign finance reform legislation began in the Senate. Supporters of the McCain-Feingold bill first attempted to pass the legislation in the Senate in September and October 1997. After these efforts were rebuffed by Majority Leader Trent Lott, supporters of the McCain-Feingold measure reached an agreement with Senator Lott that the legislation would be brought up by March 6, 1998.<sup>852</sup> In late February 1998, the Senate took up the bill again. However, a filibuster spearheaded by the Republican leadership, ended consideration of the matter, after a 51–48 vote on February 26 fell shy of the 60 votes required to end debate.<sup>853</sup>

The Senate vote demonstrated that the majority of the Senate favored comprehensive reform. As a result, the actions of the Senate Republican leadership to stop consideration of the legislation received widespread criticism. For example, the Washington Post commented:

The defeat of campaign finance reform in the Senate . . . was a failure of the legislative process. . . . The defeat in the Senate . . . was not the process at its best but a charade in which the Republicans sought to kill the bill but escape the blame.<sup>854</sup>

The House proceeded on a slower track. Speaker Newt Gingrich stated on November 13, 1997, that he hoped “to have a fair, bipartisan process for voting” on campaign finance legislation and that House GOP leaders were “committed to having a vote some time in March.”<sup>855</sup> However, on March 26, the Republican leadership postponed floor action on campaign finance legislation. Republicans reportedly were “concerned they might lose control on the House floor,” and would not be able to gain support for Republican-sponsored legislative alternatives to the Shays-Meehan proposal.<sup>856</sup> House Majority Leader Dick Armey stated, “If our guys won’t commit to us on the procedural votes, we’re not putting it (the bill) on the floor.”<sup>857</sup>

Instead of considering the Shays-Meehan legislation, the Republican leadership scheduled floor action on March 30 for alternative legislation under a procedure known as “suspension of the

<sup>851</sup> H.R. 2183.

<sup>852</sup> Joseph E. Cantor, Campaign Financing, Congressional Research Service Issue Brief No. 87020 (Updated Sept. 10, 1998) (hereafter the “Congressional Research Service Issue Brief No. 87020”).

<sup>853</sup> Id.; Campaign Reform Likely Dead in This Congress, New York Times (Feb. 27, 1998); Campaign Finance Bill Dies in Senate, Washington Post (Feb. 27, 1998).

<sup>854</sup> The Wit But Not the Will, Washington Post (Mar. 1, 1998).

<sup>855</sup> House GOP May Try to Tackle Reform One Bill at a Time, CongressDaily (Nov. 13, 1997).

<sup>856</sup> House Republicans Postpone Campaign Finance Debate, Associated Press (Mar. 26, 1998).

<sup>857</sup> Id.

rules.”<sup>858</sup> This procedure is not commonly used for consideration of controversial measures, as it does not allow for amendments, and it requires two-thirds of a majority for passage of legislation. The vote on the alternative legislation fell far short of the two-thirds majority.<sup>859</sup> This scheduling scheme, however, enabled the Republican leadership to prevent serious discussion of meaningful campaign finance reform while giving the appearance of considering campaign finance legislation.

The March actions by the House Republican leadership drew sharp public criticism. For example, the *Washington Post* stated:

The House Republican leaders have followed the unfortunate example of their Senate counterparts on campaign finance reform, only even more clumsily. Their goal was to kill the bill but avoid the blame. . . . Republicans have spent a year and a half claiming to be indignant about the fund-raising abuses in the last campaign, which were considerable, and on the part of both parties. But given the chance to change the law to ban the principal abuse, having to do with the raising and spending of so-called soft money, they flinch. . . . The tactic has been to offer up mock reform bills that they could be pretty sure (a) wouldn't pass, in part because they were written to be offensive to Democrats, and (b) wouldn't achieve reform if they did pass.<sup>860</sup>

Despite the March setback, House supporters of comprehensive campaign finance legislation pressed forward by circulating a “discharge petition” to force the House Republican leadership to take up the legislation on the House floor. Such a petition needs the signatures of 218 House members—the majority of the House. By April 22, the petition had garnered 204 members, including 12 Republicans, and Speaker Gingrich agreed to allow debate on campaign finance reform in May.<sup>861</sup>

The discharge petition indicated that a clear majority of the House was likely to support meaningful campaign finance reform. As a result, when the Republican leadership took up the campaign finance legislation in May, the leadership attempted to structure the debate in a manner that would frustrate efforts to pass effective legislation. The Republican leadership allowed debate on comprehensive campaign finance legislation, but at the same time made in order 11 substitutes, a constitutional amendment, and 258 other amendments, and allowed for consideration of additional amendments on the floor, a schedule that promised extended and complicated consideration of the matter.<sup>862</sup> The *Los Angeles Times* described the Republican leadership's maneuvering as follows:

Speaker Newt Gingrich and Majority Leader Dick Armey, the Republican chieftains who tried to bury campaign finance reform earlier this year, are at it again. Last week

<sup>858</sup> Congressional Research Service Brief No. 87020.

<sup>859</sup> *Id.*

<sup>860</sup> Hypocrisy on Campaign Funds, *Washington Post* (Apr. 1, 1998).

<sup>861</sup> Veterans, Freshmen Shook Campaign Finance Reform Loose for House Vote, *Washington Post* (Apr. 25, 1998); Gingrich Agrees to Open Debate on Campaign Money, *Atlanta Journal* (Apr. 23, 1998).

<sup>862</sup> Congressional Research Service Issue Brief No. 87020.

they outlined a cynical plan to deny what the clear majority of House members want: serious consideration of a reform bill sponsored by Reps. Christopher Shays (R-Conn.) and Martin T. Meehan (D-Mass.), the only viable reform legislation before the House at this time. . . . Gingrich and Armey have deviated from the usual House rules to allow debate on unlimited amendments being tacked onto the bill in a blatant attempt to sow confusion among legislators. Incredibly, House Republican leaders all but admit to the subterfuge. Armey, for instance, says he wants campaign reform “out of my life by July 4th,” and Rep. Ray LaHood (R-Ill.) said of his party’s strategy: “We tried squelching it first. Now we’re trying to talk it to death.”<sup>863</sup>

The effort to kill campaign finance reform through endless debate persisted throughout the summer. In late July 1998, the Washington Post described the delaying tactics of the House leadership as follows:

The House is scheduled this week to resume the bizarre debate in which the leadership for two months has tried and failed to kill campaign finance reform, only to come back a week later and try again. . . . It is long past time to allow the vote the leadership has sought to prevent. Majority Leader Richard Armey says he will allow it—next week, after the Senate is safely out of town for the August recess. Then House leaders will only have to stall the bill another month until adjournment. They can stall anything for a month. That’s the plan.<sup>864</sup>

A final vote on the Shays-Meehan bill did not occur until August 6, 1998. The bill passed by a strong majority, 252–179.<sup>865</sup> All but 15 of the 205 Democrats that voted supported the legislation, while the vast majority of Republicans (164 out of 225) voted against the bill.

At this point, however, there was little time left in the session to achieve Senate passage necessary for enactment of the bill. On September 10, hope for comprehensive campaign finance reform legislation in the 105th Congress ended, when the Senate failed to overcome procedural blocks to considering comprehensive campaign finance reform legislation.<sup>866</sup> On this vote, all 45 Democratic Senators voted to end the leadership’s filibuster. Because they were joined by only 7 Republican Senators, campaign finance reform did not receive the 60 votes needed to proceed with consideration of the legislation.<sup>867</sup>

Commentator David Broder succinctly summarized the Republican leadership conduct on the reform legislation:

It was the adamant opposition of the Republican congressional leadership that ultimately stalled campaign finance legislation. Tactics employed by Speaker Newt Gingrich delayed passage of any bill on that side of the Capitol until

<sup>863</sup> Dirty Ploy on Campaign Reform, Los Angeles Times (June 9, 1998).

<sup>864</sup> Back to Campaign Finance, Washington Post (July 27, 1998).

<sup>865</sup> House Votes, Congressional Quarterly Weekly, 2206 (Aug. 8, 1998).

<sup>866</sup> Congressional Quarterly Weekly, Senate Vote 264, 2429 (Sept. 12, 1998).

<sup>867</sup> Id.

there were fewer than four workweeks left in this session. That made it easy for a Republican filibuster to stymie action in the Senate.<sup>868</sup>

### 3. *How Committee Members Voted*

All of the Democrats and the one Independent on the Committee voted for the Shays-Meehan legislation in the House. However, even after two years of rhetoric by Committee Republicans about campaign finance abuses, only seven of the 24 Committee Republicans voted in favor of the bill. Those who voted against campaign finance reform were Chairman Burton and Reps. Hastert, Cox, Ros-Lehtinen, Mica, Davis, McIntosh, Souder, Scarborough, Shadegg, Sununu, Sessions, Pappas, Snowbarger, Barr, Miller, and Lewis. Republicans voting for the measure were Reps. Shays, Gilman, Morella, McHugh, Horn, LaTourette, and Sanford.<sup>869</sup>

The purpose of congressional investigations should be to illuminate where reforms in government policies are needed. The Committee's investigation and investigative reporting by the media have amply demonstrated the need for far-reaching campaign finance reform. Sadly, the votes against campaign finance reform by most of the Republican members of the Committee is another demonstration that the goal of the Committee's campaign finance investigation has been to embarrass Democrats—not to improve our campaign financing system.

#### B. THE REPUBLICAN LEADERSHIP SOUGHT TO HAMSTRING THE FEC

In the face of criticism for their opposition to campaign finance reform, Republican leaders such as Speaker Gingrich have claimed "the problem is lawbreakers, not the campaign finance law."<sup>870</sup> Yet, despite their professed outrage at "lawbreakers," Republican leaders have not sought to strengthen FEC enforcement of campaign finance laws. To the contrary, the Republican leadership has sought to hamstring the FEC through removal of the agency's chief law enforcement official and through inadequate funding.

#### 1. *Efforts to Remove the FEC's General Counsel*

Republican leaders have worked to pass legislation that would effectively remove FEC general counsel Lawrence Noble from his job. According to media accounts, Mr. Noble is opposed by Republicans because he has encouraged the investigation of Republican fundraising groups that include GOPAC (a political action committee formerly affiliated with Newt Gingrich), the Christian Coalition, and the weekly meeting of business leaders known as the "Thursday Group" that is hosted by House Republican conference chairman John Boehner.<sup>871</sup> He also reportedly has antagonized Repub-

<sup>868</sup>David Broder, *Renew Efforts on Campaign Finance Reform*, *Star-Ledger* Newark, NJ (Sept. 30, 1998).

<sup>869</sup>House Votes, *Congressional Quarterly Weekly*, 2206 (Aug. 8, 1998).

<sup>870</sup>Gingrich Assails Democrats for "Illegitimate" Campaign, *Atlanta Journal* (Sept. 28, 1997). See also Democrats and Clinton, in *Surprise Move, Curb Contributions, Vow to Refuse Aliens' Donations*, *Wall Street Journal* (Jan. 22, 1997) (quoting spokesperson for House Majority Leader Richard Arney as stating that campaign finance abuses "don't require changing the law").

<sup>871</sup>See, e.g., *Panel Votes Term Limits for Top FEC Staffers*, *The Hill* (Sept. 30, 1998); *Campaign Reformer Under Attack*, *New York Times* (Sept. 17, 1998); *Noble's Cause*, *The New Republic* (July 20/27, 1998); *The FEC v. the GOP*, *National Journal, Inc.* (July 11, 1998).

licans by defending FEC efforts to impose restrictions on the use of soft money in national campaigns.<sup>872</sup>

The FEC is comprised of three Republican and three Democratic commissioners. Under current law, the FEC staff director and general counsel can only be removed if four of the six commissioners approve removal. Republican leaders, however, introduced legislation that would limit the terms of the FEC staff director and general counsel to four years unless at least four of the six FEC commissioners vote to reappoint them.<sup>873</sup> Under the scheme set forth by the legislation, three commissioners could band together on party lines to force the ouster of a general counsel or staff director who took actions that were unappealing to one party or the other.

In the House, the legislation was proposed by House Oversight Committee Chairman Bill Thomas.<sup>874</sup> The House Appropriations Committee Republicans, led by Chairman Bob Livingston, added this provision to the Treasury-Postal appropriations bill in June on a party-line vote.<sup>875</sup> The language was removed, however, during House floor consideration of the bill in July on a point of order raised by Rep. Carolyn Maloney on the grounds that this language inappropriately legislated in a general appropriations bill.<sup>876</sup>

In the Senate, the legislation was spearheaded by Sen. McConnell, head of the National Republican Senatorial Committee. The Senate considered the measure in July as an amendment to S. 2312, the Treasury-Postal appropriations legislation. The Senate voted on party lines against tabling the amendment, but the bill and amendments were set aside until after the August recess.<sup>877</sup> In September, when the Senate again took up Treasury-Postal appropriations legislation, Sen. McConnell dropped much of the controversial language from the amendment, and the bill passed.<sup>878</sup>

Despite the rejection of the FEC legislation in both the House and Senate versions of the Treasury-Postal appropriations bill, Republicans in the House-Senate conference on the bill revived the FEC legislation on a party-line vote.<sup>879</sup> When the measure was brought to the floor in early October, the House once again voted to block the provision, this time by preventing the bill's consideration through a procedural vote.<sup>880</sup>

Proponents of the measure to limit the general counsel's term have denied that the FEC legislation targets Mr. Noble. However, GOP sources have acknowledged that they are "hoping to send a serious message" to the FEC.<sup>881</sup> One Republican source reportedly stated "It's not targeted at someone they dislike, but at an enforce-

<sup>872</sup> See, e.g., Editorial, Campaign Reformer Under Attack, *New York Times* (Sept. 17, 1998); *The FEC v. the GOP*, *National Journal* (July 11, 1998).

<sup>873</sup> See, e.g., H.R. 3748; Senate Amendment No. 3379.

<sup>874</sup> H.R. 3748; Punishing Competence at the F.E.C., *New York Times* (June 11, 1998).

<sup>875</sup> *The FEC v. the GOP*, *National Journal* (July 11, 1998); *GOP Targets Election Commission's Staff*, *Wall Street Journal* (June 12, 1998).

<sup>876</sup> *Congressional Record*, H5675 (July 16, 1998).

<sup>877</sup> Action on Treasury-Postal Bill Is Suddenly Halted after Dispute over Term Limits at FEC, *Congressional Quarterly Weekly*, 2111 (Aug. 1, 1998); *Congressional Quarterly Weekly*, Senate Vote 246, 2122 (Aug. 1, 1998).

<sup>878</sup> Senate Passes Treasury-Postal Bill after GOP Postpones Debate on Term Limits for FEC Staff, *Congressional Quarterly*, 2345 (Sept. 5, 1998).

<sup>879</sup> *GOP Passes Contentious Bill*, *Associated Press* (Sept. 29, 1998).

<sup>880</sup> *Congressional Quarterly Weekly*, House Vote 475, 2690 (Oct. 3, 1998).

<sup>881</sup> *FEC Counsel Tries to Prevent His Ouster*, *Roll Call* (Oct. 1, 1998).

ment program they don't like that has been fairly aggressive with important constituencies of the leadership.”<sup>882</sup>

Although the professed goal of the Republican leadership is to strengthen FEC enforcement, the repeated attempts to remove Mr. Noble are designed to have the opposite effect. As the New York Times wrote in an editorial, “At a time when Congress should be moving aggressively to strengthen the Federal Election Commission’s ability to enforce the nation’s campaign finance laws, House Republicans are racing headlong in the opposite direction. . . . The [measure] is nothing more than an attempt to install a do-nothing enforcement staff.”<sup>883</sup>

## 2. *Efforts to Defund the FEC*

In addition to efforts to remove the FEC general counsel, the Republican leadership also has opposed providing the FEC with the financial resources the FEC has requested over the past few years. For example, the FEC asked for \$6.6 million in additional funds for FY 1997 and 1998 to hire staff for the heavy caseload resulting from the 1996 election, but congressional appropriators refused this request.<sup>884</sup> Appropriators provided a funding increase to the FEC for FY 1998, but required that the majority of this amount go toward computer modernization, instead of staffing needs.<sup>885</sup> Rep. Robert Livingston, chairman of the House Appropriations Committee, explained his position on funding the FEC as follows: “I see no reason to increase their revenue. . . . I think they have become a political organization, they perpetuate their own base, and they don’t do the job they were intended to do. I just don’t believe in these guys.”<sup>886</sup>

During consideration of the fiscal year 1999 appropriations legislation that funded the FEC, House appropriators again did not provide the full amount requested by the FEC. When the funding measure reached the full House, however, \$2.8 million was added to the FEC funds through an amendment sponsored by Reps. Carolyn Maloney and Vince Snowbarger. Only 27 of 223 Republican members that voted supported this amendment, while 186 of 200 Democratic members that voted supported this amendment.<sup>887</sup>

Unfortunately, the vast majority of the Committee Republicans did not support providing the funding requested by the FEC. Only seven of the 24 Republicans on the Committee voted for the amendment to the Treasury-Postal appropriations bill that provided the FEC with an additional \$2.8 million. All of the Democrats and the one Independent on the Committee voted in favor of the amendment.<sup>888</sup> It is an ultimate irony that at the same time that Committee Republicans have spent millions of dollars investigating alleged Democratic campaign finance abuses, they refuse to provide proper

<sup>882</sup> *Id.*

<sup>883</sup> Punishing Competence at the F.E.C., New York Times (June 11, 1998). See also, Housing Lawrence Noble, New York Times (Oct. 2, 1998); A Law-and-Order Issue, Washington Post (Sept. 28, 1998); Micro-Muzzling, Roll Call (June 11, 1996).

<sup>884</sup> Money Woes Leave FEC Watchdog with More Bark Than Bite, Congressional Quarterly Weekly, 469–70 (Feb. 28, 1998).

<sup>885</sup> *Id.*

<sup>886</sup> *Id.*

<sup>887</sup> Congressional Quarterly Weekly, House Vote 287, 1970 (July 18, 1998).

<sup>888</sup> Congressional Record, Final Vote Results for Roll Call 287 (July 16, 1998).

support to the very agency that is charged with enforcing our campaign finance laws and preventing further abuses.

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4060

Offset Folios 4883 to 5107, 5110 to 5254, 5265-5312, 5255-5264,  
5313-5326, 5329-5424, 01-05, 5427, 5429, 5428, 5430-5434, 5436-  
5439, 5442-5446, 06, 5447, 5449-5454, 07, 5538, 5457-5459, 5462-  
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ADDITIONAL VIEWS OF HON. THOMAS M. BARRETT

I agree with chapters I, IV, and V of the minority views.

THOMAS M. BARRETT.

